(29,345)

(29,346)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 795.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, CONSTITUTING THE MINIMUM WAGE BOARD OF THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA.

No. 796.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, CONSTITUTING THE MINIMUM WAGE BOARD OF THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

WILLIE A. LYONS.

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Court of Appeals, District of Columbia, January Term, 1923.

No. 3939.

JESSIE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellants,

vs.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation.

Appeal from the Supreme Court of the District of Columbia.

Filed January 10, 1923.

2 Court of Appeals of the District of Columbia, January Term 1923.

No. 3939.

JESSIE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellants,

vs.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellee.

Appeal from the Supreme Court of the District of Columbia.

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3 Supreme Court of the District of Columbia.

In Equity.

No. 37888.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Plaintiff,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOSEPH A. BERBERICH, Constituting the Minimum Wage Board of the District of Columbia, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

4 *Bill for Injunction.*

Filed May 19, 1920.

In the Supreme Court of the District of Columbia.

In Equity.

No. 37888.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Plaintiff,

vs.

JESSIE C. ADKINS, ETHEL M. SMITH, JOSEPH A. BERBERICH, Constituting the Minimum Wage Board of the District of Columbia, Defendants.

To the Supreme Court of the District of Columbia:

The Plaintiff states as follows:

I. The Plaintiff is a corporation organized and existing under the laws of the District of Columbia, and brings this suit in its own right.

II. Defendants are citizens of the United States and residents of the District of Columbia, and are members of the Minimum Wage Board of the District of Columbia, and are sued as such members.

III. That the Plaintiff is engaged in conducting and maintaining a hospital for children in the District of Columbia. That it employs a large number of women over 18 years of age, both white and colored, in and about the work of conducting said hospital, including superintendent, assistant superintendent, washerwomen, scrubwomen, attendants, and others; that in the exercise of its right to make contracts satisfactory to the parties to such contracts, it has agreed with said employees as to the rates of wages and compensation for their services and that said rates of wages and compensation are satisfactory to such employees.

IV. That heretofore on September 19, 1918, the Congress of the United States passed an Act entitled, "An Act to protect the lives and health and morals of women and minor workers in the District of Columbia and to establish a Minimum Wage Board, and to define its powers and duties, and to provide for the fixing of minimum wages for such workers, and for other purposes." Said Act created a Board to be known as the Minimum Wage Board of the District of Columbia. Pursuant to the supposed authority vested in them by the said Act, the Commissioners of the District of Columbia appointed as members of the said Board, Jesse C. Adkins, Ethel M. Smith and Joseph A. Berberich, the defendants named herein, who assumed to enter upon the discharge of their duties as such Board.

V. That on June 13, 1919, pursuant to the supposed authority vested in them by the said Act, the Minimum Wage Board issued the following order:

"M. W. B. Order No. 4.
Hotel, Restaurant
and allied industries

District of Columbia,
Minimum Wage Board,
502 District Building.

Washington, D. C., March 26, 1920.

To Whom it may Concern:

Take Notice: That pursuant to the authority in it vested by the Act of Congress known as the District of Columbia Minimum Wage Law (Public numbered 215, 65th Congress) and after public hearing duly held in Washington, D. C., on Monday, March 22, 1920, The Minimum Wage Board of the District of Columbia does hereby order that:

1. No person, firm, association, or corporation shall employ a woman or minor girl in any hotel, lodging house, apartment house, club, restaurant, cafeteria, or other place where food is sold to be consumed on the premises or in any hospital, at a rate of wages of less than 34½ cents per hour, $16.50 per week, or $71.50 per month. This shall not be construed to include nurses in training.

2. When bona fide meals are furnished by the employer to any woman or minor girl employed in the establishments named in Section 1 of this order as part payment of the wages of such employee, not more than 30 cents per meal may be deducted by such employer from the weekly wage of such employee. A record shall be kept of the number of meals furnished each woman and minor girl per week and of the deductions made from the weekly wage for the same; otherwise the full minimum wage rate shall be paid in cash.

3. When lodging is furnished by the employer to any woman or minor girl employed in the establishments named in Section 1 of this order as part payment of the wages of such employee, not more than $2.00 per week shall be deducted by such employer from the weekly wage of such employee.

4. Tips and gratuities shall not be construed as part of the legal minimum wage.

This order shall become effective sixty (60) days from date hereof.

MINIMUM WAGE BOARD OF THE
DISTRICT OF COLUMBIA,
JESSE C. ADKINS,
Chairman;
ETHEL M. SMITH,
JOSEPH A. BERBERICH.

Attest:
CLARA MORTENSEN,
Secretary.

6 Notice: This order will become effective May 26, 1920.

Your attention is respectfully called to the following sections of Public numbered 215, 65th Congress:

Whoever violates this Act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $25 nor more than $100, or by imprisonment not less than ten days nor more than three months, or by both such fine and imprisonment. (Section 18.)

Every employer affected by this order shall keep a copy thereof posted in a conspicuous place in each room in his establishment in which women workers are employed. (Section 12.)"

VI. That Plaintiff is now engaged in conducting said hospital for children and is desirous of continuing the same; that in the work in which it is engaged, it is desirable and necessary to employ women workers over 18 years of age, and Plaintiff now employs a number of such women, both white and colored. Some of the said women workers so employed by the Plaintiff are paid higher rates of pay than that fixed by said order of the Minimum Wage Board of the District of Columbia, but that a large number of the women so employed in and about the work of conducting the said hospital as Washerwomen, and other help, are paid less than the wages so

fixed in said order, such wages being paid pursuant to an agreement with each employee which is satisfactory to the parties to the agreement, and Plaintiff desires and intends to continue to employ women workers under agreements mutually satisfactory, if permitted to do so.

VII. That said defendants, as the Minimum Wage Board of the District of Columbia, are by said statute directed, and they threaten to and each of them threatens to, and will, unless restrained by this Court, cause Plaintiff to be prosecuted for violating the said order by employing women over 18 years of age in its said hospital at less than $16.50 per week. That Plaintiff employs and will, if permitted, continue to employ in the conduct of the said hospital a large number of women over 18 years of age in its said hospital for a less wage than $16.50 per week, and so doing will constitute a distinct and separate offense each day for each person so employed if defendants are permitted to enforce or attempt to enforce said order, and Plaintiff will be subjected to a multitude of criminal prosecutions and the work conducted at said hospital will be seriously interfered with before it can secure a judicial construction of said statute and order.

And this plaintiff avers that said Act of said Congress is not a law in the said District of Columbia, but is void and of no effect, because it is repugnant to and in violation of the Constitution of the United States, in that:

(1) It deprives Plaintiff of its property and its liberty without due or any process of law.

(2) It denies to Plaintiff the equal protection of the law.

(3) It provides for the taking of the property of this Plaintiff without just or any compensation.

7 (4) Said Act denies to and deprives Plaintiff of the right to have the reasonableness of said order judicially reviewed and determined.

And plaintiff avers that the lowest wage it pays to any woman over 18 years of age not an apprentice employed in its hospital is $22.50 per month and board, and plaintiff further alleges that if said order of said Board shall be enforced it will seriously hamper, if not prevent, carrying on and conducting the said hospital, for plaintiff avers that it cannot pay the wages by said order required or directed and still conduct its said hospital as now conducted, within its income, and, therefore, plaintiff avers that enforcement of said order will confiscate plaintiff's said property.

And plaintiff further avers that it is necessary in the conduct of its said business that it be permitted to use its judgment in securing employees for certain of the work necessary to be done at said hospital, at such wages as may be agreed to between the parties, and that as to all the women so employed by the plaintiff at its said hospital it has agreed to pay wages and compensation that are fair and just and that were and still are satisfactory to said employees and

each of them. That the said women employed by it are not all equally efficient or capable of doing the same amount of work, but their ability in this respect varies; that the hours of work are not uniform and many of said women work not over six hours per day; that the character of the work of said women varies and each of said women so employed is engaged in that character of work which plaintiff believes, and so avers, is best suited to her capabilities and desires, and that these facts and circumstances as to the character of the work and the capabilities of the workers were taken into consideration by plaintiff in employing said women and in agreeing with them and each of them, as to the amount of pay and other compensation fixed for their services; and plaintiff is advised and believes, and therefore avers, that each of said women with whom such contracts of employment were so made, was of full age and under no legal disability, or in any way disqualified to agree as to the amount of money that she should charge for her services, and was in all respects as free to contract as are adult men; and plaintiff believes and avers that the agreements for wages made with said women were made voluntarily and not under any compulsion or duress of any kind, but in the exercise by said employees and this plaintiff of their rights to freedom of contract. And plaintiff further avers that the said statute of September 19, 1918, and the said order made under color thereof, unduly restrain plaintiff and its said employees in the exercise of their right of freedom of contract, in contravention of the Constitution of the United States, and particularly the fifth amendment thereof, which forbids the deprivation of life, liberty and property without due process of law.

VIII. Plaintiff avers that there has been invested in said hospital for children a large amount of money, to wit, over $463,000.00, and much time has been devoted to the work of building up and establishing the same, so that the reputation and good-will thereof is now of great value, but the exact amount of value thereof plaintiff is unable to state, but it alleges that if said order shall be en-
8 forced it will be compelled to curtail and hamper its said work if not to abandon said hospital for children without any compensation therefor, and therefore the plaintiff further avers that said order is in violation of its rights under the Constitution of the United States.

IX. That the wages of certain of the women over 18 years of age employed by plaintiff in its hospital for children is from $22.50 to $35.00 per month in addition to board, and many of the more skillful earn $75 per month, in addition to board; that a wage of $22.50 to $35.00 per month (and board) to women to whom the same is paid, is not unreasonably low, but is adequate compensation for services rendered. That said women employed in said hospital for children who receive less than $16.50 per week are incompetent by reason of age, inability or otherwise to earn more. That many of said women have other sources of income and are living with parents or relatives and desire and expect to earn only a portion of their support, and if plaintiff is to be compelled to pay to each of these

women a wage of not less than that fixed for it by said Minimum Wage Board, it will be compelled to discontinue said hospital along the lines the same is now conducted, since it could not be conducted on its income. In any case the plaintiff will be necessarily restricted to the employment only of women who are capable of performing labor sufficient to earn the said sum of $16.50 per week or more, and said less competent employees will be prevented from laboring for this plaintiff. Plaintiff further avers that it is now employing men at wages less than those fixed for adult women in said order of said Minimum Wage Board, and if plaintiff is to be compelled to pay to all women employees over 18 years of age, experienced or otherwise, the said sums fixed by said Board, it will of necessity be required to pay the said men now in its employ at least $16.50 per week, for this plaintiff avers that the men now in its employ would refuse to perform the work now performed by them, which is substantially similar to that performed by some of its said women employees, at a less wage per week than that paid to said women in the same kind of employment. Plaintiff, therefore, avers that it will be compelled to discontinue to employ many of said men employed by it, or also to pay to them at least $16.50 per week, which would entail such a great expense that it would be impossible to conduct said hospital for children within its income. Plaintiff further avers that the work of the said women employees in its said hospital for children is light and healthful, physically, and the moral surroundings are good, and that said women now employed as aforesaid, who are earnings less than $16.50 per week are willing to work for plaintiff at said labor for the wages now paid, and they do not nor do any of them earn any greater wages than they are paid, and the plaintiff cannot conduct its said hospital for children within its income and pay said less competent women $16.50 per week, or any greater sum or wages than it is now paying them.

Plaintiff further avers that it is a charitable corporation, and that in caring for the children of the District of Columbia in its said hospital it is filling a long-felt need in said District. Plaintiff
9 further avers that it has no means of obtaining money with which to conduct its said hospital except from voluntary subscriptions and from the payments by parents and guardians or others for patients who are received for pay, and many of the patients treated in said hospital are cared for without any remuneration whatsoever. Plaintiff avers, therefore, that to be compelled to pay the said wage fixed by said Board to all of its said employees would so increase its cost of operation that it could not attempt to conduct its said hospital within its income, with the result that the many poor children whose parents are unable to provide medical treatment for them will be without any place where the same may be obtained.

X. That plaintiff has no plain, adequate and complete remedy at law and unless said order shall be annulled and the defendants and each of them restrained from attempting to enforce said statute and order, defendants will cause a large number of criminal prosecutions to be institute against this plaintiff and will injure and de-

stroy the plaintiff's said business by enforcing or attempting to enforce the same, thereby entailing upon the plaintiff great and irreparable loss, injury and damage.

Wherefore, the premises considered, the plaintiff prays:

First. That the Court may cause its writ of subpœna to be issued directed to the defendants and each of them, commanding them and each of them to appear and answer the exigencies of this bill.

Second. That the said defendants and each of them and their successors in office may be enjoined and restrained, both pending this suit and permanently at the final hearing thereof from enforcing or attempting to enforce the said order above set out and any other order which it has issued or may hereafter issue.

Third. That this Honorable Court issue a decree vacating and annulling said statute and order.

Fourth. And for such other and further relief as to the Court may seem proper.

THE CHILDREN'S HOSPITAL OF
THE DISTRICT OF COLUMBIA,
By SAMUEL S. ADAMS,
Secretary.

CHALLEN B. ELLIS,
Attorney for Plaintiff.

DISTRICT OF COLUMBIA, *To wit:*

Samuel S. Adams, being first duly sworn, deposes and says that he is Secretary of The Children's Hosiptal of the District of Columbia, the corporation named as plaintiff in the foregoing bill by him subscribed; that he is authorized to make this affidavit; that the matters and things therein stated of his personal knowledge are true, and those stated upon information and belief he believes to be true.

SAMUEL S. ADAMS.

10 Subscribed and sworn to before me, this 18th day of May, 1920.

FRANCIS C. WEBB,
Notary Public.

[SEAL.]

Com. Expires May 1, 1921.

Rule to Show Cause.

Filed May 19, 1920.

* * * * * * *

Upon consideration of the bill of complaint filed herein it is this 19th day of May, 1920, ordered that the defendants, Jesse C. Adkins, Ethel M. Smith and Joseph A. Berberich, members of the Minimum

Wage Board of [illegible] of Columbia, show cause, if any they have, on or before 10:00 o'clock a. m. on Tuesday next, May 25th, 1920, why they should not be enjoined and restrained, as prayed in said bill of complaint, provided that a copy of this rule be served upon said defendants on or before Thursday, May 20, 1920.

JENNINGS BAILEY,
Justice.

Marshal's Return.

Served a copy of the within rule on Jesse C. Adkins, Ethel M. Smith & Joseph A. Berberich each personally.
May 9th, 1920.

MAURICE SPLAIN,
U. S. Marshal.

K.

Answer to Rule to Show Cause.

Filed May 25, 1920.

* * * * * * *

Now come the respondents, Jesse C. Adkins, Ethel M. Smith and Joseph A. Berberich, constituting the Minimum Wage Board of the District of Columbia, the defendants herein, and for answer to the rule to show cause in this case, show to the Court as follows:

1 and 2. The defendants admit the allegations in paragraphs 1 and 2 in said petition for the purpose of the said rule, except they say that the defendant Adkins is a resident of the state of Maryland.

3. Answering paragraph 3 for the purpose of said rule these defendants admit the allegations in respect to the conduct of the hospital for children by the plaintiff and as to the officers and employees thereof, but defendants say that the allegations in said paragraph, that the rates of wages and compensation are satisfactory to such employees, is immaterial, but if the Court should deem the same material, they ask for strict proof thereof.

11 4. Defendants admit the allegations of paragraph four for the purpose of the said rule.

5. Defendants admit paragraph five, except they say the order was issued on March 26, 1920.

6. Defendants admit the allegations of paragraph six except as to averment that the wages paid to employees are satisfactory to such employees, which allegation defendants believe to be immaterial, but if the Court should deem the same material, they ask for strict proof thereof.

7*a*. Answering paragraph 7*a* for the purpose of the said rule, defendants admit that under the law it will become their duty to ask

for prosecution against the plaintiff if the latter violates the orders and regulations passed by the Minimum Wage Board. Defendants are not advised to what extent, if at all, the work of the said plaintiff will be seriously interfered with by such prosecutions, or as a result of such prosecutions, but submits that an earnest effort on the part of the plaintiff should be made to comply with the law and regulations of the Board before seeking to overturn the law as unconstitutional.

b. Answering paragraph 7*b*, defendants are advised that this sets forth matters of law which require no answer,—they aver, however, that the law is constitutional, and valid.

c. Answering paragraph 7*c*, defendants say they are not advised in what manner or to what extent the work of the plaintiff will be hampered by an observance of the law and regulations, but submit again that some earnest effort should be made by the plaintiff in the rearrangement of wages paid the number of employees employed, and other matters, in an attempt to comply with the law. They deny that said order will work a confiscation of people's property.

d. Further answering said paragraph, defendants say that the same consists largely of matters of argument which defendants are not required to answer here. The order of this Board fixes an hourly rate of 34½ cents. Part time workers may be paid on this basis; that the other matters set forth in said paragraph are matters of opinion and law which defendants are advised need not be answered here.

8. Answering paragraph 8 for the purpose of the said rule, defendants say they are not advised as to the amount of money invested in said hospital and believe the same to be immaterial. Further said Board is not advised to what extent, if at all, the work of said hospital in caring for children without compensation, will be hampered, but say that such averments are immaterial, or if material, ask for strict proof thereof.

9. Answering paragraph 9 for the purpose of the said rule, defendants admit the allegations as to the amount of wages paid, but aver that they are unreasonably low and in contravention of the orders of this Board. Further, defendants say that if any of the employees are incapacitated by reason of age, inability or otherwise, to earn the minimum wage of $16.50 a week as prescribed by the Board, the plaintiff hospital was at liberty to apply to this Board for a special license as provided in section 13 of the Act which follows:

12 "That for any occupation in which only a minimum time-rate wage has been established, the Board may issue to a woman whose earning capacity has been impaired by age or otherwise, a special license authorizing her employment at such wage less than such minimum time-rate wage as shall be fixed by the Board and stated in the license."

but defendants say no special application has been made to them for any such special license nor any facts presented to them why a special license or licenses should be granted. Further answering said paragraph, these defendants say that the other matters and things therein set forth are matters of opinion and argument that are mere conjecture and need not be answered here.

Defendants are advised that, unless a woman's earning capacity be impaired, it is not material whether or not the employer deems her labor to be worth the amount fixed in such order. The purpose of the statute is to provide at least a living wage for every normal woman who is employed. If the employer does not consider the employee worth such a wage he need not employ her. Defendants deny that plaintiff cannot conduct its hospital for children and pay the minimum wages provided for in said order.

Defendants admit that plaintiff is a charitable corporation and in caring for the children of the District of Columbia it is filling a long-felt need in the District. Defendants aver that some of the plaintiff's patients pay ample charges for what they receive. Defendants also aver that the plaintiff will benefit in the long run from the operation of the Minimum Wage Law. The effect of the said law will be to decrease poverty and sickness, and to greatly lessen the need for plaintiff's hospital, and particularly free treatment by it.

Defendants aver that there are many women who are compelled to support themselves, have no other sources of income, and do not live with their parents or relatives, and are compelled entirely to support themselves and frequently to contribute to the support of others.

10. Answering paragraph ten, these defendants say that the order complained of by the plaintiff set forth in paragraph five of the said petition was promulgated upon the 26th day of March, 1920; that under section 17 of the law the plaintiff hospital had the right, and it was its duty, if injured by the ruling of the Board, to appeal from the ruling of the Board to the Supreme Court of the District of Columbia, from which an appeal would likewise go to the Court of Appeals of the District, but the said hospital has taken no appeal upon the decision of the Board to the said Supreme Court.

11. Further answering the said petition for the purpose of said rule, these defendants say that there are no matters of fact or law set forth in said petition which entitle it to relief in Court of Equity, or to a restraining order or injunction from such Court.

They therefore pray that said rule be discharged and the petition herein dismissed.

JESSE C. ADKINS,
____ ____,
____ ____,
Minimum Wage Board of the District of Columbia.

13 DISTRICT OF COLUMBIA, *ss:*

We, Jesse C. Adkins, Ethel M. Smith and Joseph A. Berberich, being duly sworn, depose and say that we constitute the Minimum

Wage Board of the District of Columbia; that we have read the answer by us subscribed as such Board and know the contents thereof; and that the matters and things therein set forth upon our personal knowledge are true, and those stated upon information and belief we believe to be true.

JESSE C. ADKINS,
____ ____,
____ ____,
Minimum Wage Board of the District of Columbia.

Subscribed and sworn to before me this 25" day of May, 1920.
MORGAN H. BEACH,
Cl'k,
By F. E. CUNNINGHAM,
Ass't Cl'k.

Motion to Dismiss Bill.

Filed May 25, 1920.

* * * * * * *

Now come the defendants by their attorney and move the Court to dismiss the bill in the above entitled cause, for that there are no matters and things either of fact or of law set forth therein, to entitle it to equitable relief.

F. H. STEPHENS,
Attorney for Defendants.

Opinion of the Court.

Filed June 22, 1920.

* * * * * * *

Being of the opinion that the Minimum Wage act is constitutional the motion to dismiss the bill will be sustained.

As to the application for an injunction the bill in this case is based upon the contention that the Minimum Wage act is unconstitutional and that the Minimum Wage Board has no power to fix a minimum wage. In the case of Wadley Southern Railway Co. v. Georgia, 235 U. S., 651, at page 662, in referring to the cases in which injunctions were granted and speaking of the validity of legislative rates, Mr. Justice Lamar said:

"Their legality is not apparent on the face of such orders but depends upon a showing of extrinsic facts."

14 In addition, the rules of this court do not provide for the granting, by this court, of an injunction pending appeal, except where an injunction pendente lite has already issued.

It results therefore that the application for an injunction pendente lite will be denied; the rule discharged; and the bill dismissed.

JENNINGS BAILEY,
Justice.

Decree Discharging Rule, &c.

Filed June 25, 1920.

* * * * * * *

This cause having come on for hearing on the original bill filed herein and the rule to show cause why a preliminary injunction should not issue, the answer to said rule and the motion of the defendants to dismiss the petition and discharge the rule, and having been argued by counsel and considered by the Court—

It is this 25th day of June, 1920, adjudged, ordered and decreed that the rule to show cause be discharged and the application for a preliminary injunction be, and the same hereby is, denied.

It is also adjudged, ordered and decreed that the bill filed herein be, and the same hereby is dismissed, at the cost of the plaintiff.

JENNINGS BAILEY,
Associate Justice.

From the above decree the plaintiff notes an appeal in open court; and the bond on such appeal is hereby fixed at one hundred dollars, ($100.00).

JENNINGS BAILEY,
Associate Justice.

Form O. K.
C. B. ELLIS.

15 *Mandate.*

Filed December 15, 1922.

UNITED STATES OF AMERICA, *ss:*

[SEAL.]

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between The Children's Hospital of the District of Columbia, a Corporation, plaintiff, and Jesse C. Adkins, Ethel M. Smith, Joseph A. Berberich, constituting the Minimum Wage Board of the District of Columbia, defendants, Equity No. 37,888, wherein the decree of the said Supreme Court entered in said cause on the 25th day of June A. D. 1920, is in the following words, viz:

This cause having come on for hearing on the original bill filed herein and the rule to show cause why a preliminary injunction should not issue, the answer to said rule and the motion of the defendants to dismiss the petition and discharge the rule, and having been argued by counsel and considered by the Court——

It is this 25th day of June, 1920, adjudged, ordered and decreed that the rule to show cause be discharged and the application for a preliminary injunction be, and the same hereby is, denied.

It is also adjudged, ordered and decreed that the bill filed herein be, and the same hereby is dismissed, at the cost of the plaintiff.

JENNINGS BAILEY,
Associate Justice.

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals
16 of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And, whereas at the term of January A. D. 1921, of the said Court of Appeals, the retirement of Joseph A. Berberich, and the appointment of John J. Newbold as his successor as a member of the Minimum Wage Board of the District of Columbia having been suggested, It was ordered that the said John J. Newbold as a member of the Minimum Wage Board be made a party appellee.

And Whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-two, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration Whereof, It is now here ordered adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed with costs, and that the said plaintiff, The Children's Hospital of the District of Columbia, a corporation, recover against the said appellees Fifty dollars and forty cents for its costs herein expended and have execution therefor.

And it is further ordered that this cause be and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

November 6, 1922.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause in conformity with the opinion and decree of this court as according to right justice
17 and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Constantine J. Smyth, Chief Justice of said Court of Appeals, the 15th day of December in the year of our Lord one thousand nine hundred and twenty-two.

Costs of Plaintiff.

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

Clerk	$18.40
Attorney	5.00
Printing Record	27.00
	$50.40

Decree.

Filed December 20, 1922.

This cause came on to be heard at this term pursuant to the mandate of the Court of Appeals of the District of Columbia heretofore filed herein, and upon consideration of the bill of complaint, answer to rule to show cause and other pleadings, and motion to dismiss the bill of complaint, the parties not desiring to plead further or to adduce facts or evidence and the matter having been presented to the Court by counsel for both parties and considered by the Court, it is this 20th day of December, 1922, adjudged, ordered and decreed as follows:

1. That the Act of Congress, entitled, "And Act to protect the lives and health and morals of women and minor workers in the District of Columbia and to establish a Minimum Wage Board, and to define its powers and duties, and to provide for the fixing of mini-
18 mum wages for such workers, and for other purposes," known and designated as the Minimum Wage Law of the District of Columbia, is invalid because in conflict with the Constitution of the United States and the amendments thereto.

2. That the defendants, and each of them, and their successors in office, be and they are hereby permanently enjoined from enforcing or attempting to enforce against the plaintiff its Order No. 4 dated March 26, 1920, with respect to minimum wages for women employes in hotel, restaurant and allied industries, or any other order which it has issued or may hereafter issue, and from prosecuting the plaintiff under said Act, and from taking any steps with respect to it or its business under and by virtue of any right or authority claimed to exist by reason of said Act.

A. A. HOEHLING,
Justice.

From the foregoing decree, the defendants, in open Court, appeal to the Court of Appeals of the District of Columbia; and if it be that bond or undertaking on appeal is required by law in the case, the same is fixed in the penalty of $100, or deposit of $50 cash.

A. A. HOEHLING,
Justice.

December 20, 1922.

Assignments of Error.

Filed December 21, 1922.

* * * * * * *

Now come the defendants by their attorney and assign for
19 errors in the above entitled cause,

1. The action of the Court in holding unconstitutional and void the Act of September 19, 1918, entitled "An Act to protect the lives and health and morals of women and minor workers in the District of Columbia, and to establish the Minimum Wage Board and to devise powers and duties and to provide for the fixing of minimum wages for such workers, and for other purposes."

2. The action of the court in permanently enjoining the defendants from enforcing or attempting to enforce its Order Number 4 of March 26, 1920, fixing the minimum wages for women employees in hotels, restaurants, and allied industries.

F. H. STEPHENS,
Attorney for Defendants.

Designation of Record.

Filed December 21, 1922.

* * * * * * *

The Clerk of the Court will please prepare the transcript of record for the Court of Appeals in the above entitled cause consisting of the following:

1. The bill of complaint.

2. The rule to show cause issued thereon.

3. Answer of the defendants to the rule to show cause.

4. Defendants motion to dismiss the bill of complaint.

5. Final decree of June 25, 1920. discharging the rule to show cause and denying preliminary injunction.

6. The opinion of Mr. Justice Bailey of June 22, 1920.

7. The mandate of the Court of Appeals.

20 8. The final decree of December 20, 1922 and the appeal therefrom in open court.

9. Assignments of error filed by the defendants.

10. This designation.

11. Memorandum of undertaking on appeal.

F. H. STEPHENS,
Attorney for Defendants.

Memorandum.

January 8, 1923.—$50. deposited in lieu of Undertaking on Appeal.

21 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 17, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 37888, in Equity, wherein The Children's Hospital of the District of Columbia, a Corporation, is Plaintiff and Jesse C. Adkins, et al. constituting the Minimum Wage Board of District of Columbia are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 10th day of January, 1923.

[Seal of the Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

E. W.

Endorsed: District of Columbia Supreme Court. No. 3939. Jesse C. Adkins, et al., Appellants, vs. The Children's Hospital of the District of Columbia, a Corporation. Court of Appeals. District of Columbia. Filed January 10, 1923. Henry W. Hodges, Clerk.

22 TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia, January Term, 1923.

No. 3940.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellants,

vs.

WILLIE A. LYONS.

Appeal from the Supreme Court of the District of Columbia.

Filed January 10. 1923.

23 Court of Appeals of the District of Columbia, January Term, 1923.

No. 3940.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellants,

vs.

WILLIE A. LYONS, Appellee.

Appeal from the Supreme Court of the District of Columbia.

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24 Supreme Court of the District of Columbia.

Equity. No. 38293.

WILLIE A. LYONS, Plaintiff,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOSEPH A. BERBERICH Constituting the Minimum Wage Board of the District of Columbia, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

25 *Bill of Complaint.*

Filed September 25, 1920.

In the Supreme Court of the District of Columbia.

Equity. No. 38293.

WILLIE A. LYONS, Plaintiff,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOSEPH A. BERBERICH, Constituting the Minimum Wage Board of the District of Columbia, Defendants.

To the Supreme Court of the District of Columbia:

The Plaintiff respectfully represents as follows:

I.

That the plaintiff is a woman of the age of twenty-one years, and is a resident of the District of Columbia; that the defendants are residents of the District of Columbia and are members of the Minimum Wage Board of the District of Columbia.

II.

That the Congress Hall Hotel Company is a corporation, organized and existing under the laws of the District of Columbia, and is engaged in the business of conducting a hotel; that plaintiff was heretofore, on the 25th day of May, 1920, and for some months prior thereto, employed by said hotel as an elevator operator and received therefor a salary of $35 a month and two meals a day, in compensation for her services; that said work in said hotel is light and healthful, physically and morally; that the hours of labor are short, not over six hours a day, and that the surroundings in which the plaintiff worked are agreeable and pleasant; that the plaintiff is anxious to continue to work for the wages and board now paid, and that the plaintiff did not earn any greater wages.

The plaintiff states that she was on or about May 25th, 1920, notified by the Congress Hall Hotel Company that, while her services had been entirely satisfactory and while the hotel would be glad to continue her services at the same wages, the hotel company would be unable to do so, but would be compelled to dispense with the services of plaintiff on May 26, 1920, by reason of a certain Act hereinafter referred to, and a certain order of the defendants purporting to make it a criminal offense for the said hotel company to continue to employ the plaintiff at said wages which were satisfactory to the plaintiff, and denying to said hotel company its freedom of contract
26 with the plaintiff, and denying to the plaintiff her right to work for whom she pleased at such wages as she pleases.

Plaintiff states that she is of sound mind and understanding and does not desire such guardianship or interference with her personal freedom to make her own contracts.

III.

That heretofore on September 19, 1918, the Congress of the United States passed an Act entitled "An Act to protect the lives and health and morals of women and minor workers in the District of Columbia to establish a Minimum Wage Board, and to define its powers and duties, and to provide for the fixing of minimum wages for such workers, and for other purposes." Said Act created a Board to be known as the Minimum Wage Board of the District of Columbia. Under color of said Act, the Commissioners of the District of Columbia appointed as members of the said Board, Jesse C. Adkins, Ethel M. Smith and Joseph A. Berberich, the defendants named herein, who pretended to enter upon the discharge of their duties as such Board.

IV.

That on June 13, 1919, assuming to exercise authority under said Act, the Minimum Wage Board issued the following order:

"*M. W. B., Order No. 4, Hotel, Restaurant, and Allied Industries.*

District of Columbia,

Minimum Wage Board,

502 District Building.

Washington, D. C., March 26, 1920.

To whom it may concern:

Take notice: That pursuant to the authority in it vested by the Act of Congress known as the District of Columbia Minimum Wage Law (Public numbered 215, 65th Congress) and after public hearing duly held in Washington, D. C. on Monday, March 22, 1920. The Minimum Wage Board of the District of Columbia, does hereby order that:

1. No person, firm, association, or corporation shall employ a woman or minor girl in any hotel, lodging house, apartment house, club, restaurant, cafeteria, or other place where food is sold to be consumed on the premises or in any hospital, at a rate of wages of less than 34½ cents per hour, $16.50 per week, or $71.50 per month. This shall not be construed to include nurses in training.

2. When bona fide meals are furnished by the employer to any woman or minor girl employed in the establishments named in Section 1 of this order as part payment of the wages of such
27 employee, not more than 30 cents per meal may be deducted by such employer from the weekly wage of such employee.

A record shall be kept of the number of meals furnished each woman and minor girl per week and of the deductions made from the weekly wage for the same; otherwise the full minimum wage rates shall be paid in cash.

3. When lodging is furnished by the employer to any woman or minor girl employed in the establishments named in Section 1 of this order as part payment of the wages of such employee, not more than $2.00 per week shall be deducted by such employer from the weekly wage of such employee.

4. Tips and gratuities shall not be construed as part of the legal minimum wage.

This order shall become effective sixty (60) days from date hereof.

MINIMUM WAGE BOARD OF THE DISTRICT OF COLUMBIA,
JESSE C. ADKINS,
Chairman.
ETHEL M. SMITH.
JOSEPH A. BERBERICH.

Attest:
CLARA MORTENSON,
Secretary.

Notice: This order will become effective May 26, 1920.

Your attention is respectfully called to the following sections of Public numbered 215, 65th Congress:

Whoever violates this Act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $25 nor more than $100, or by imprisonment not less than ten days nor more than three months, or by both such fine and imprisonment. (Section 18.)

Every employer affected by this order shall keep a copy thereof posted in a conspicuous place in such room in his establishment in which women workers are employed. (Section 12.)"

V.

That the wages which this plaintiff was receiving as aforesaid are the best wages and compensation for her labor that she is able to receive for any employment or labor which she is capable of performing, and the enforcement of said order deprives her of said employment and wages. That the work in the hotel where plaintiff was engaged is light and healthful and the surroundings clean, and the moral atmosphere and conditions are the best. That by said employment plaintiff lived and maintained herself in health and comfort. That plaintiff was employed in said hotel pursuant to an agreement between the plaintiff and the said hotel company, and

said hotel company is ready and willing to resume and con-
28 tinue the employment of the plaintiff in her said position at the same wages as aforesaid, but that said defendants and each of them threatens to, and will, unless restrained by this court, cause the plaintiff's employer, said Congress Hall Hotel Company, to be prosecuted for resuming the employment of this plaintiff for said work in said hotel at such rate of wages agreed upon between the plaintiff and her employer, the same being less than the minimum wages prescribed in said order of said Board, although said wages and board are entirely satisfactory to the plaintiff, and although plaintiff would be glad to resume said employment and continue to work at said wages; and if said defendants are permitted to enforce said order, said hotel company will be denied the right to contract with the plaintiff to work at said wages, and plaintiff will be denied the right to contract for her services for said wages, and deprived of her position and of her means of earning a living, because she is a woman over the age of 18 years.

Plaintiff further avers that she cannot secure any other position in which plaintiff can make a living in as healthful surroundings, physically and morally, and earn as good wages as she received as aforesaid; and that there is no position plaintiff could fill more wholesome to health and morals than the position she so held for the wages she received.

The plaintiff avers, moreover, that if the said defendants shall be restrained by this Court from enforcing the said order, then the plaintiff will resume and continue in said employment at the wages paid her as aforesaid, and at which wages this plaintiff is desirous of continuing, and will thereby continue to earn her living as aforesaid if permitted to do so.

VI.

And this plaintiff avers that said Act of Congress is not a law in the said District of Columbia, but is void and of no effect, because it is repugnant to and in violation of the Constitution of the United States in that, and said order made under color of said Act is void because,

(1) Said Act and order deprive plaintiff of her means of livelihood, her property, and of her liberty without due process of law.

(2) In attempting to make it a criminal offense for the Congress Hall Hotel Company to continue to employ the plaintiff at wages satisfactory to said hotel and to the plaintiff, there is an unconstitutional interference with plaintiff's freedom of contract.

(3) Said Act and order attempt by legislative decree to declare that plaintiff's health and morals would be injured by continuing to work for the satisfactory wage she has been receiving, whereas the contrary is the fact.

(4) Said Act and order deny to plaintiff the right to work in surroundings pleasant, healthful and moral, for whom she pleases

and at wages satisfactory to her; while at the same time said Act and order do not deny men the right to work for whom they please at such wages as they may please.

29 (5) Said Act and order attempt to make the plaintiff a ward of the Government and to treat the plaintiff as being incompetent to contract, thus abridging and denying the plaintiff her rights under the Constitution of the United States.

(6) That Congress has no authority under the Constitution of the United States to fix the price of plaintiff's labor.

(7) That said Act and order discriminate against the plaintiff merely because she is a woman, and attempt to deny to her rights enjoyed by all male citizens of the United States to work for whom she pleases at such wages as may be agreeable to her.

(8) That said Act and order deny to plaintiff the equal protection of the laws.

(9) That said Act and order provide for the taking of the property of this plaintiff without just or any compensation.

VII.

That plaintiff has no plain, adequate or complete remedy at law and unless the defendants, and each of them, shall be restrained from attempting to enforce said unconstitutional statute and said void order against the employing of this plaintiff she will be deprived of that employment, and of her right to accept and engage in such employment, and thereby entail upon her great and irreparable loss, injury and damage.

Wherefore, the premises considered, the plaintiff prays:

First. That the Court may cause its writ of subpœna to be issued directed to the defendants, and each of them, commanding them and each of them to appear and answer the allegations in this bill.

Second. That the said defendants and each of them and their successors in office may be enjoined and restrained, both pending this suit and permanently at the final hearing thereof, from enforcing or attempting to enforce the said order above set out, or any other order which it has issued or may hereafter issue under said unconstitutional statute.

Third. That this Honorable Court issue a decree vacating said order and annulling said unconstitutional statute.

Fourth. And for such other and further relief as to the Court may seem proper.

WILLIE A. LYONS.

CHALLEN B. ELLIS,
Attorney for Plaintiff.

CITY OF WASHINGTON,
District of Columbia:

Personally appeared before me Willie Lyons, who, upon being duly sworn, states on her oath that she is the plaintiff in the above entitled cause, and that the facts stated in the foregoing petition of her own knowledge are true, and that the facts stated in said petition as on information and belief she believes to be true.

WILLIE A. LYONS.

Subscribed and sworn to before me this 16 day of Sept. 1920.

[SEAL.]

FRANCIS C. WEBB,
Notary Public, D. C.

My commission expires 5/1/21.

Rule to Show Cause.

Filed September 25, 1920.

* * * * * * *

Upon consideration of the Bill of Complaint filed herein, it is this 25 day of September, 1920, ordered that the defendants, Jesse C. Adkins, Ethel M. Smith and Joseph A. Berberich, members of the Minimum Wage Board of the District of Columbia, show cause, if any they have, on or before 10:00 o'clock A. M. on Tuesday October 4th, 1920, why they should not be enjoined and restrained as prayed in said Bill of Complaint; provided that a copy of this rule be served upon said defendants on or before Wednesday, September 29th, 1920, the rule to be heard before Mr. Justice Bailey.

WENDELL P. STAFFORD,
Justice.

Marshal's Return.

Served a copy of the within rule on Jesse C. Adkins and Joseph A. Berberich each personally 9/27/20.
Ethel M. Smith not to be found Sept. 29, 1920.

MAURICE SPLAIN,
U. S. Marshal.

K.

Answer to Rule to Show Cause.

Filed October 4, 1920.

* * * * * * *

Now come the defendants, and for answer to the rule to show cause issued herein, say to the Court as follows:

1. They admit the allegations of paragraph 1 of the said bill.

2. They admit the matters of fact set forth in paragraph 2.

3. They admit the matters of fact set out in paragraph 3.

4. Answering paragraph 4, defendants say that the order referred to therein was made on March 26th, 1920, and not on June 13th, 1919, as set forth. They admit the other matters set out in said paragraph.

5. Answering paragraph 5, defendants say that other elevator operators in the District are paid at a rate of wage *with* complies with Order No. 4, set out in paragraph IV of the bill, and that other hotels, apartment houses and stores in the District of Columbia pay adequate wages under said order and furnish employees with
31 surroundings as pleasant and desirable as those now enjoyed by her, defendants therefore deny that plaintiff is deprived of the right to contract for her services or that she is deprived of her position and means of earning a livelihood.

Defendants deny, also, that plaintiff cannot secure another position in which she can make a living in as healthful surroundings as her present position. Defendants assume that plaintiff is a person of average intelligence and physical strength. If she be deficient mentally or physically, that fact should be made known to the Wage Board, and a special certificate issued to her, as provided by law.

6, 7. Defendants say that paragraphs 6 and 7 of the bill contain averments of law which they are advised need not be answered.

Having fully answer- the said rule to show cause, defendants pray that the same be discharged.

JESSE C. ADKINS,
ETHEL M. SMITH,
JOSEPH A. BERBERICH,
Defendants.

DISTRICT OF COLUMBIA, *ss:*

I, Jesse C. Adkins, do solemnly swear that I am one of the defendants herein and one of the members of the Minimum Wage Board of the District of Columbia, the other members being Ethel N. Smith and Joseph A. Berberich; that I have read the foregoing and annexed answer to the rule to show cause by us subscribed, and know the contents thereof, and that the matters and things therein stated upon our personal knowledge are true, and those stated upon information and belief I believe to be true.

JESSE C. ADKINS.

Subscribed and sworn to before me this first day of October, 1920.

[SEAL.] CHARLES E. GEBHARDT,
Notary Public, D. C.

Motion to Dismiss.

Filed October 4, 1920.

* * * * * * *

Now come the defendants by their attorney and move the Court to dismiss the bill in the above entitled cause, for that there are no matters and things either of fact or of law set forth therein, to entitle her to equitable relief.

F. H. STEPHENS,
Attorney for Defendants.

32 *Order Discharging Rule and Dismissing Bill.*

Filed October 5, 1920.

* * * * * * *

This cause having come on for hearing on the original bill filed herein and the rule to show cause why a preliminary injunction should not issue, the answer to said rule and the motion of the defendants to dismiss the petition and discharge the rule, and having been argued by counsel and considered by the Court,

It is this 5th day of October, 1920, adjudged, ordered and decreed that the rule to show cause be discharged and the application for a preliminary injunction be, and the same hereby is, denied.

It is also adjudged, ordered and decreed that the bill filed herein be, and the same hereby is dismissed, at the cost of the plaintiff.

JENNINGS BAILEY,
Associate Justice.

From the above decree the plaintiff notes an appeal in open court; and the bond on such appeal is hereby fixed at One hundred dollars ($100.00).

JENNINGS BAILEY,
Associate Justice.

33 *Mandate.*

Filed December 15, 1922.

UNITED STATES OF AMERICA, *ss.*

[SEAL.]

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between Willie A. Lyons, plaintiff and Jesse C. Adkins, Ethel M. Smith, Joseph A. Berberich,

Constituting the Minimum Wage Board of the District of Columbia, defendants, Equity No. 38,293, wherein the decree of the said Supreme Court entered in said cause on the 5th day of October, A. D. 1920, is in the following words, viz:

This cause having come on for hearing on the original bill filed herein and the rule to show cause why a preliminary injunction should not issue, the answer to said rule and the motion of the defendants to dismiss the petition and discharge the rule, and having been argued by counsel and considered by the Court,

It is this 5th day of October, 1920, adjudged, ordered and decreed that the rule to show cause be discharged and the application for a preliminary injunction be, and the same hereby is, denied.

It is also adjudged, ordered and decreed that the bill filed herein be, and the same hereby is dismissed, at the cost of the plaintiff.

JENNINGS BAILEY,
Associate Justice.

as by the inspection of the transcript of the record of the
34 said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas at the term of January A. D. 1921, of the said Court of Appeals, the retierment of Joseph A. Berberich, and the appointment of John J. Newbold as his successor as a member of the Minimum Wage Board of the District of Columbia having been suggested. It was ordered that the said John J. Newbold as a member of the Minimum Wage Board be made a party appellee.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-two, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed with costs, and that the said plaintiff Willie A. Lyons recover against the said appellees Forty-five dollars and seventy cents for her costs herein expended and have execution therfor.

And it is further ordered that this cause be, and the same is hereby remanded to the said Supreme Court for further proceeding not inconsistent with the opinion of the Court.

November 6, 1922.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause in conformity with
35 the opinion and decree of this Court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Constantine J. Smyth, Chief Justice of said Court of Appeals, the 15th day of December in the year of our Lord one thousand nine hundred and twenty-two.

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Costs of plaintiff:

Clerk	$18.20
Attorney	5.00
Printing Record	22.50
	$45.70

Decree.

Filed December 20, 1922.

* * * * * * *

This cause came on to be heard at this term pursuant to the mandate of the Court of Appeals of the District of Columbia heretofore filed herein, and upon consideration of the bill of complaint, answer to rule to show cause and other pleadings, and motion to dismiss the bill of complaint, the parties not desiring to plead further or to adduce facts or evidence, and the matter having been presented to the Court by counsel for both parties and considered by the Court, it is this 20th day of December, 1922, Adjudged, Ordered and Decreed as follows:

1. That the Act of Congress entitled "An Act to protect the lives and health and morals of women and minor workers in the District of Columbia and to establish a Minimum Wage Board, and to define its powers and duties, and to provide for the fixing of mini-
36 mum wages for such workers, and for other purposes.", known and designated as the Minimum Wage Law of the District of Columbia, is invalid because in conflict with the Constitution of the United States and the amendments thereto.

2. That the defendants, and each of them, and their successors in office, be and they are hereby permanently enjoined from enforcing or attempting to enforce as affects the plaintiff its order No. 4 dated March 26, 1920, with respect to minimum wages for women employes in hotel, restaurant and allied industries, or any other order which it has issued or may hereafter issue, and from taking any steps affecting this plaintiff under and by virtue of any right or authority claimed to exist by reason of said Act.

A. A. HOEHLING,
Justice.

From the foregoing decree, the defendants, in open court, appeal to the Court of Appeals of the District of Columbia; and if it be that

bond or undertaking on appeal is required by law in the case, the same is fixed in the penalty of $100.00 or deposit of $50. cash.

A. H. HOEHLING,
Justice.

December 20, 1922.

Assignment of Errors.

Filed December 21, 1922.

* * * * * * *

Now come the defendants by their attorney and assign for errors in the above entitled cause,

37 1. The action of the court in holding unconstitutional and void the Act of September 19, 1918, entitled "An Act to protect the lives and health and morals of women and minor workers in the District of Columbia, and to establish the Minimum Wage Board and to devise powers and duties and to provide for the fixing of minimum wages for such workers, and for other purposes."

2. The action of the Court in permanently enjoining the defendants from enforcing or attempting to enforce its Order Number 4 of March 26, 1920, fixing the minimum wages for women employees in hotels, restaurants, and allied industries.

F. H. STEPHENS,
Attorney for Defendants.

Designation of Record.

Filed December 21, 1922.

* * * * * * *

The Clerk of the Court will please prepare the transcript of record for the Court of Appeals in the above entitled cause consisting of the following:

1. The bill of complaint.
2. The rule to show cause issued thereon.
3. Answer of the defendants to the rule to show cause.
4. Defendants' motion to dismiss the bill of complaint.
5. Final decree of Oct. 5, 1920, discharging the rule to show cause and denying preliminary injunction.
6. The opinion of Mr. Justice Bailey of June 22, 1920.
7. The mandate of the Court of Appeals.

38 8. The final decree of December 20, 1922, and the appeal therefrom in open court.

9. Assignment of errors filed by the defendants.

10. This designation.

11. Memorandum of undertaking on appeal.

F. H. STEPHENS,
Attorney for Defendants.

Memorandum.

January 8, 1923.—$50 deposited in lieu of undertaking on appeal.

39 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 14, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 38293 in Equity, wherein Willie A. Lyons is Plaintiff and Jesse C. Adkins et al., constituting the Minimum Wage Board of the District of Columbia, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 10th day of January, 1923.

[Seal of the Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

L. M. G.

Endorsed: District of Columbia Supreme Court. No. 3940. Jesse C. Adkins, Ethel M. Smith, John J. Newbold, Constituting the Minimum Wage Board of the District of Columbia, Appellants, vs. Willie A. Lyons. Court of Appeals, District of Columbia. Filed January 10, 1923. Henry W. Hodges, Clerk.

40 Saturday, February 5th, A. D. 1921.

* * * * * * *

It is ordered by the Court, pursuant to Section 6 of the act of Congress approved February 9, 1893, entitled "An act to establish the Court of Appeals of the District of Columbia, and for other purposes," that the Honorable Wendell P. Stafford, Associate Justice of the Supreme Court of the District of Columbia, be, and he is hereby, designated to sit as a member of this Court in the absence of Mr.

Justice Robb, in the hearing and decision of the following cases, namely: Nos. 8, 9, 10 and 11 Special Calendar; and 3370, 3414, 3421, 3423, 3426, 3427, 3429, 3434, 3436, 3437, 3438, 3440, 3443, 3446, 3449, 3451, 3456, 3458, 3460 and 3467, General Calendar, January Term 1921.

CONSTANTINE J. SMYTH,
Chief Justice.
JOSIAH A. VAN ORSDEL,
Associate Justice.

41 Monday, February 14th, A. D. 1921.

* * * * * * *

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia,

and

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

The argument in the above entitled causes was commenced by Mr. C. B. Ellis, attorney for the appellants, and was continued by Mr. Felix Frankfurter, attorney for the appellees, and was concluded by Mr. Jos. W. Folk, attorney for the appellants.

42 In the Court of Appeals of the District of Columbia.

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

This appeal involves the constitutionality of an Act of Congress approved September 19, 1918 (40 Stat. 960), and known as the

Minimum Wage Act. The purpose of the Act as stated by it is "to protect the women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living," and the Act emphatically directs that it shall be interpreted to effectuate this purpose.

In view of the issue, to be stated in a moment, a brief outline of the Act will suffice. It provides for the appointment of a Minimum Wage Board by the Commissioners of the District of Columbia, with power to investigate and ascertain the wages of women and minors in the different occupations in which they are employed in the District; to examine the records of any employer of women or minors that have a bearing on the question of the wages paid to such workers, and to require the employer to make true statements of the wages paid to them. The Commissioners of the District are directly to supply to the Board all information gathered by them under an Act of Congress to regulate the hours of employment and safeguard the health of females employed in the District of Columbia. 38 Stat. 291. All parties interested are entitled to be heard before the Board, witnesses may be summoned, and the aid
43 of the courts may be invoked for the purpose of compelling their attendance. After the prescribed investigation has taken place, it is made the duty of the Board to declare standards of minimum wages for the women in the occupations investigated and "what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals." The Board is also authorized to determine standards of minimum wages for minors and "what wages are unreasonably low for any such minor workers." In the event that a woman's earning capacity has been impaired by age or otherwise, the Board may issue a license authorizing her employment for less than the minimum wage fixed.

A violation of the Act is made a misdemeanor, punishable by fine or imprisonment, or both. An employer who discriminates against an employee because of any part taken by her in a proceeding before the Board shall be guilty of a misdemeanor punishable by fine. If a woman is paid less than the minimum wage to which she is entitled she may recover the difference between the minimum wage and that paid, together with reasonable attorney's fees; and no agreement made by her to work for less than the minimum wage will be a defense to such action. No appeal to the courts is allowed from a decision of the Board on a question of fact, but an appeal may be taken on a question of law.

The Board having in the manner provided by the Act investigated the conditions of women and minor girls employed by hotels, lodging houses, apartment houses, clubs, restaurants, cafeterias and hospitals, and the wages paid to them in these establishments, issued an order forbidding, among other things, any person or corporation to employ a woman or minor girl in any of these places " at a rate of wages of less than 34½ cents per hour, $16.50 per week, or $71.50 per month," but providing that where bona fide meals are furnished

as part payment of wages, not more than thirty cents per meal may be deducted from the weekly wages.

44 The plaintiff alleged in its bill that it was a corporation conducting a hospital for children in the District of Columbia; that it employed a large number of women over eighteen years of age to whom it paid not less than $22.50 per month and board, and that if the order of the Minimum Wage Board were enforced it would serve to hamper, if not prevent, the carrying on and conducting of the hospital, for the reason "that it cannot pay the wages by said order required or directed and still conduct its said hospital as now conducted, within its income," and, therefore, it averred that enforcement of the order would deprive it of its property without due process, in contravention of the Fifth Amendment to the Constitution of the United States, and it asked that the defendants, appellees here, be enjoined from enforcing the Act. A rule to show cause was issued to which the defendants made answer and then moved to dismiss the bill on the ground that its allegations did not entitle plaintiff to the relief sought. The motion was sustained and the plaintiff appeals.

Appellant does not deny the reasonableness of the wage established by the Board. If its employees were not able because of age or of anything else to earn that wage, it could have procured permission under Section 13 of the Act to employ them for less; but it made no application for this permission. Its argument is, as we understand it, that since its employees are willing to work for a smaller wage—a wage less than is necessary to sustain them in good health according to the findings of the Board,—it has a right to contract with them on that basis; and because the Act deprives it of that right it interferes with its liberty of contract and thereby deprives it of its property without due process. In other words, it argues that Congress has no power to fix any wage, reasonable or unreasonable, for women and minors.

45 It is now firmly established, so often has it been decided, that the high respect due from one coordinate branch of the Government to another forbids the Judiciary to declare an Act of Congress invalid unless it is manifestly so.

"Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule." Sinking-Fund Cases, 99 U. S. 700, 718. Mr. Justice Holmes, speaking for the court, in Otis vs. Parker, 187 U. S. 606, 608, 609, said. "While the courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view as well as for possible peculiar conditions which this court can know but perfectly, if at all. Otherwise a constitution, instead of embodying

only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held Semper ubique et ab omnibus." Supporting the same views are Rast vs. Van Deman & Lewis Co., 240 U. S. 342, 366; United States vs. L. Cohen Grocery Company, decided by the Supreme Court of the United States February 28, 1921; Patterson vs. Kentucky, 97 U. S. 501, 503, and Louisiana vs. Jumel, 107 U. S. 711, 767. Since "every possible presumption" is in favor of the legality of a statute, he who attacks it has the very heavy burden, if he would succeed, of establishing its invalidity beyond a reasonable doubt. This must be kept in mind throughout our discussion.

46 As we have just seen, the position of the appellant is that under no conceivable state of facts would Congress have the power to pass a minimum wage act. This must be its position, for if it admitted that under any state of facts Congress possessed that power, we would have to assume that those facts existed when the present act was passed. Such is the doctrine of Munn vs. Illinois, 94 U. S. 113, 132, wherein it is said: "For our purposes we must assume that, if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us the question is one of power, not of expediency. If no state of circumstances could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the State. But if it could, we must presume it did." That principle has often been assailed, but the court has steadily refused to recede from it in any respect. Some of the cases which illustrate this are: Ga. Banking Co. vs. Smith, 128 U. S. 174, 180; Budd vs. New York, 143 U. S. 517, 543; German Alliance Ins. Co. vs. Kansas, 233 U. S. 409; Brooks Scanlon Co. vs. Railroad Commission, 251 U. S. 396. In the Kansas Case I find this: "Munn v. Illinois was approved in many state decisions, but it was brought to the review of this court in Budd v. New York, 143 U. S. 517, and this doctrine, after elaborate consideration, reaffirmed, and against the same arguments which are now urged against the Kansas statute."

When Congress legislates for the District of Columbia it may exercise the police power in all its plenitude. Washington Terminal Co. vs. District of Columbia, 36 App. D. C. 186, 191; District of Columbia vs. Brooke, 214 U. S. 138, 149. About this there is no dispute. Under that power it has the right "to enact laws for the promotion of the health, safety, morals and welfare of those subject to its jurisdiction." Chicago, Burlington & Quincy Railroad Co. vs. McGuire, 219 U. S. 549, 568. See also the recent case of Block vs.

47 Hirsh, decided by the Supreme Court of the United States April 18, 1921. Does this Act fall within the power? The Congress by enacting it says it does. "Upon what sound principles as to the relations existing between the different departments of government can the court review this action of the legislature?" Jacobson vs. Mass., 197 U. S. 11, 31. It can be done only where "a statute purporting to have been enacted to protect the

public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law * * *." Mugler vs. Kansas, 123 U. S. 623, 661; see also Minnesota vs. Barber, 136 U. S. 313, 320, and Atkin vs. Kansas, 191 U. S. 207, 223.

We first inquire whether or not the Act has any real or substantial relation to its declared object. For answer we may resort to our common knowledge. "A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the legislature and the courts. * * * The fact that the belief is not universal is not controlling, for there is scarcely any belief that is accepted by every one." In Re Viemeister, 179 N. Y. 235, 240, approved in Jacobson vs. Mass., supra, 34. To the same effect is McNichols vs. Pease, 207 U. S. 100, 111. "We think," says the Supreme Court, "that the trial court might well take judicial notice that the public health is deeply concerned in the reclamation of swamp and overflowed lands. If there is any fact which may be supposed to be known by everybody, and, therefore, by the courts, it is that swamps and stagnant waters are the cause of malarial and malignant fevers, and that the police power is never more legitimately exercised than in removing such nuisances." Leovy vs. United States, 177 U. S. 621, 636. It is equally well known that if a working woman does not receive a sufficient wage to supply her with necessary food, shelter, and clothing, and she is compelled to subsist upon less than her requirements demand, the result must be that her health would be injuriously affected.

The House Committee's report shows that the Committee held extensive hearings on the bill. Six hundred women workers
48 were interviewed. About half of them, it was found, earned less than $8 per week, and over two-thirds less than $10 a week. This situation was not owing to their youth and inexperience, for seventy-two per cent. were twenty-one years of age or older, and one-half of those earning less than $9 per week had been at work for five years and more. The least for which the average woman could obtain board and lodging in the District was $35 per month. Sufficient clothing, "even with the strictest economy," could not be obtained for less than $88 per year. Nearly forty-two per cent. of the six hundred women interviewed spent less than that on clothing. To be well dressed, but not extravagantly, a woman must spend approximately $125 per year, and sixty-eight per cent. of the women interviewed spent less than that amount. In the lowest paid groups of workers the average expenditure for clothing, says the report, "is below that which would permit of physical comfort and decency." Of the six hundred interviewed "45 per cent needed to receive outside assistance in order to make both ends meet." The Merchants and Manufacturers' Association of the District, representing thirty-three different businesses and employing about 5,000 persons, made known to the Committee that it approved the bill. No one appeared to oppose it. The Committee said that the remedy provided by the bill had been tried and found successful in various States of the Union and in other parts of the English-speaking world, and con-

cluded "that inadequacy of wages means either of two things, * * * inadequacy of all the essentials—shelter, clothing, food, etc., with resultant impoverishment of health, or * * * that from some source the wage must be supplemented with possible resort to wrongdoing."

Thirteen States of the Union, either by a statute or a constitutional provision; eight provinces of Canada, Argentina, France, Great Britain, Norway and Austria by legislative acts, have provided for a minimum wage for women on the theory that it tends to
49 safeguard their health. Students of the subject and public boards in different parts of the world have found and declared as a result of thorough investigation that minimum wage stimulates industrial efficiency and aids industrial peace. These things we learn from the brief and oral argument of appellees. If they be true, and their truth is tacitly admitted by the appellant since it did not question it, then it would appear that in the judgment of a large part of the world there is an intimate relation between a minimum wage and the public welfare.

Minimum wage statutes have been assailed several times in the courts but no court has held one invalid. Stettler vs. O'Hara, 69 Oreg. 519; Simpson vs. O'Hara, 70 Oreg. 261; Williams vs. Evans, 139 Minn. 32; State vs. Crow, 130 Ark., 272; Larsen vs. Rice, 100 Wash. 642; Spokane Hotel Co. vs. Younger, 13 Wash. Dec. 322; Holcombe vs. Creamer, 231 Mass. 99, ad Poye vs. State, — Tex. —, decided October 15, 1920. This fact is worthy of serious consideration. Halter vs. Nebraska, 205 U. S. 34, 40.

But putting aside the Committee's report and the other things we have just mentioned, if there be doubt of our right to use them, and resting only on what everyone knows—our common knowledge—we can not doubt that this act has a substantial relation to its expressed object.

We now come to the other element of the problem. Is the Act a palpable invasion of rights secured by the fundamental law?

In variant forms of argument it is urged that the Act is invalid because it interferes with freedom of contract. That it does so must be conceded, but that is not fatal. Every statute exerting the police power interferes with freedom of contract. Under such a statute persons are forbidden to contract to do certain things which they were free to do before its enactment. If it be correct that the statute is void on that ground, there would be no room for the play of the police power. But, obviously, it can not be correct. "There
50 is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." The right to make contracts "is subject also, in the field of state action, to the essential authority of government to maintain peace and security, and to enact laws for the promotion of the health, safety,

morals and welfare of those subject to its jurisdiction." Chicago, Burlington & Quincy Railroad Co. v. McGuire, 219 U. S. 549, 567, 568.

In German Alliance Insurance Co. vs. Kansas, 233 U. S. 389, 409, Mr. Justice McKenna, speaking of the dissenting opinion of Mr. Justice Brewer in Budd vs. New York, 143 U. S. 517, wrote: "Every consideration was adduced, based on the private character of the business regulated, and, for that reason, its constitutional immunity from regulation, with all the power of argument and illustration of which that great judge was a master. The considerations urged did not prevail. Against them the court opposed the ever existing police power in government and its necessary exercise for the public good, and declared its entire accommodation to the limitations of the Constitution. The court was not deterred by the charge (repeated in the case at bar) that its decision had the sweeping and dangerous comprehension of subjecting to legislative regulation all of the businesses and affairs of life and the prices of all commodities." Therein the learned justice examines many of the prior decisions of the Supreme Court with respect to the police power and finds that according to them that power, when exercised for the public good, is in "entire accommodation to the limitations of the Constitution."

51 Many are the instances in which the court has sustained statutes involving a restriction upon freedom of contract: It has approved an Act limiting the hours of employment in mines and smelters (Holden vs. Hardy, 169 U. S. 366); forbidding the sale of cigarettes without license (Gundling vs. Chicago, 177 U. S. 183); requiring the redemption in cash of store orders issued in payment of wages (Knoxville Iron Co. vs. Harbison, 183 U. S. 13); prohibiting contracts for options to sell or buy grain (Booch vs. Ill., 184 U. S. 425); permitting an individual to condemn property for the purpose of obtaining water for his land (Clark vs. Nash, 198 U. S. 361); and forbidding the employment of women in laundries more than ten hours a day (Muller vs. Oregon, 208 U. S. 412). In each of these cases the right of private contract was involved, but that did not deter the court from sustaining the statutes.

Between the sphere of constitutional guaranties and that of the police power there is a dividing line, but the courts have purposely refrained from pointing out just where it lies. Jacobson vs. Mass., supra, 11, 25. "It is always easier to determine whether a particular case comes within the general scope of the power, than to give an abstract definition of the power itself which will be in all respects accurate. No one denies, however, that it extends to all matters affecting the public health or the public morals." Stone vs. Miss., 101 U. S. 814, 818. Correctly understood, the constitutional guaranties against deprivation of liberty or property without due process of law protect only against arbitrary deprivation or arbitrary spoliation. In the leading case of Barbier vs. Connolly, 113 U. S. 27, 31, the court considered the scope of the Fourteenth Amendment. It said: "But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfer with the

power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the in-
52 dustries of the State, develop its resources, and add to its wealth and prosperity." In Miller vs. Wilson, 236 U. S. 373, 380, Mr. Justice Hughes, speaking for the court, said: "As the liberty of contract guaranteed by the Constitution is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest—the question is whether the restrictions of the statute have reasonable relation to a proper purpose." Supporting the same doctrine are Holden vs. Hardy, 169 U. S. 366; Muller vs. Oregon, 208 U. S. 412; Riley vs. Commonwealth of Mass., 232 U. S. 671, and Bosley vs. McLaughlin, 236 U. S. 385.

Even property may be destroyed without compensation through the legitimate exercise of this power without offending against the constitutional guaranty. Mugler vs. Kansas, 123 U. S. 623. "No legislature can bargain away the public health or public morals. The people themselves cannot do it, much less their servants." Stone vs. Miss., ante, 819. In the Mugler case the court, speaking of the Fourteenth Amendment, said: "* * * and it has never been regarded as incompatible with the principle, equally vital, because essential to the peace and safety of society, that all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community." (P. 665). Other cases to the same effect are New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S. 650, 672; Beer vs. Mass., 97 U. S. 25, 32. "That the Fourteenth Amendment was not intended to and does not strip the States of the power to exert their lawful police authority is settled, and requires no reference to authorities." Thus spoke the learned chief justice in Louisville & Nashville Railroad vs. Melton, 218 U. S., 36, 52.

While it is true that it was the Fourteenth Amendment and not the Fifth Amendment which was under consideration in many of the decisions which we have just referred to, what is said therein is as applicable to the one as to the other. Indeed, it is so stated in Barbier vs. Connolly, supra, 31.

53 Repeatedly the Supreme Court has upheld statutes limiting the hours of labor on the footing that excessive hours interfere injuriously with the health of those who are compelled to practice them. Holden vs. Hardy, supra, 366; Muller vs. Oregon, 208 U. S. 412; Riley vs. Commonwealth of Mass., supra, 671; Miller vs. Wilson, supra, 373, and Bosley vs. McLaughlin, 236 U. S. 385. The first case related to men engaged in mining. Does not a wage which will provide sufficient food have as close a relation to health as hours of labor do? We think so.

If we may accept the House Committee's report, an evil existed. The workers, by reason of the law of competition, were unable to remove it. They were compelled to submit or go without work. "Necessitous men," says Lord Chancellor Nothington, "are not, truly speaking, free men." Vernon vs. Bethel, 2 Eden, 110, 113. Congress alone could apply the remedy.

Suppose the women engaged in the different lines covered by the order in question were each paid only $6.00 per week while $16.50 per week were necessary to feed, clothe and shelter each, and their employers could afford to pay $16.50 a week but would not pay it because under the law of supply and demand women had to work for that wage or starve, should not the government have the power, in the interests of the community, if not of humanity, to interpose and compel the payment of a living wage. The choicest function of government is to protect the weak against the unrighteous acts of those who are strong economically or physically. Would it be just to permit an employer to exact from a woman $16.50 worth of work for $6.00 simply beacuse he had the power to do so? We think not.

Congress in pursuance of the Constitution (Art. 1, Sec. 8) has authority to pass a protective tariff law for the purpose of guarding industries against foreign competition, to the end that their owners may be able to exact higher prices for the output of the in-
54 dustries than they could secure if foreign competition was permitted. This authority is not conferred specifically, but under the power to collect taxes, duties, inposts, and excises, and to regulate commerce with foreign nations it is inferred. Arnold vs. United States, 147 U. S. 494; United States vs. American Express Co., 177 Fed. 735. Unless it be dangerous to intrust Congress with the power to increase the price which Manufacturers may charge for their commodities by restricting competition, it should not be dangerous to clothe it with power to reasonably increase the wages of working women and minor girls by the same process.

Much was said during the argument at the bar to the effect that if this statute is sustained it will lead to sovietism, general price-fixing, and so forth. When statutes having that effect come up for judgment we shall deal with them. It is no part of our duty to engage in speculation concerning them now. "Our present duty," says Mr. Justice McKenna, "is to pass upon the statute before us, and if it has been enacted upon a belief of evils that is not arbitrary we cannot measure their extent against the estimate of the legislature. McLean vs. Arkansas, 211 U. S. 539." Tanner vs. Little, 240 U. S. 369, 385. Se- also Central Lumber Co. vs. South Dakota, 226 U. S. 157, 160, and Purity Extract Co. vs. Lynch, 226 U. S. 192, 204, 205.

Concerning sovietism, however, we may say that we do not think the upholding of the Act will have the tendency claimed. On the contrary, we are convinced the opposite effect will be produced, because the decision will demonstrate that this Government, as framed by the Fathers, has ample power, and those invested with that power have the disposition, to protect the weak against the strong by administering justice to both. If the power did not exist and the government could not interfere but would have to stand supinely by while wrong dominated right, there might be some basis for the contention that a change is necessary in our institutions; but with the recognition of the power, virile and efficient, the contention loses all force it might otherwise have.

55 It appears to us conclusively that a minimum wage has a real and substantial relation to the health and morals of women and minor girls who work, and that Congress by providing for the establishment of such a wage in the manner outlined in the statute has not acted arbitrarily or spoliatively, but clearly within the limits of the police power with which it is intrusted.

Finding no error in the decree, it is affirmed in all respects, at the cost of the appellant.

Affirmed.

CONSTANTINE J. SMYTH,
Chief Justice.

Mr. Justice Stafford, of the Supreme Court of the District, sat in the place of Mr. Justice Robb.

Endorsed: No. 3438. The Children's Hospital of the District of Columbia, a corporation, Appellant, vs. Jesse C. Adkins, Ethel M. Smith, John J. Newbold, Constituting the Minimum Wage Board of the District of Columbia. Opinion of the Court per Mr. Chief Justice Smyth. Court of Appeals. District of Columbia. Filed June 6, 1921. Henry W. Hodges, Clerk.

56 In the Court of Appeals of the District of Columbia.

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

This is a companion appeal of No. 3,438, The Children's Hospital of the District of Columbia vs. Jesse C. Adkins, Ethel M. Smith, et al., this day decided. It too involves the constitutionality of the Minimum Wage Act (40 Stat. 960). The only difference between it and that case is that here appellant is an employee of a hotel, while there the appellant was an employer, but the legal principles applicable are the same. The decision in that case rules this. Consequently the decree of the trial court is affirmed at the cost of the appellant.

Affirmed.

CONSTANTINE J. SMYTH,
Chief Justice.

Mr. Justice Stafford, of the Supreme Court of the District, sat in the place of Mr. Justice Robb.

(Endorsed:) No. 3467. Willie A. Lyons, Appellant, vs. Jesse C. Adkins, et al. Opinion of the Court per Mr. Chief Justice Smyth. Court of Appeals, District of Columbia. Filed Jun. 6, 1921. Henry W. Hodges, Clerk.

57 In the Court of Appeals of the District of Columbia.

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

Concurring Opinion.

In this case, which is brought to contest the constitutionality of the minimum wage law for women from the standpoint of the employer, the same observations are pertinent that have been made in the companion case brought by an employe. In addition it need only be said that the asserted right of the employer to be served by any one who is willing to work for him, and at any wage the worker is willing to accept, must be subordinate to the right of the public to see that those women who are obliged to work for a living shall not be obliged to work for less than a living. For this and the reasons given in the preceding case I think the judgment should be affirmed.

WENDELL P. STAFFORD,
Justice.

Mr. Justice Stafford of the Supreme Court of the District of Columbia sat in the place of Mr. Justice Robb.

Endorsed: No. 3438. The Children's Hospital of The District of Columbia, &c., Appellant, vs. Jesse C. Adkins, et al. Concurring Opinion by Mr. Justice Stafford. Court of Appeals. District of Columbia. Filed June 6, 1921. Henry W. Hodges, Clerk.

58 In the Court of Appeals of the District of Columbia.

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

Concurring Opinion.

Although I concur entirely in the opinion of the Chief Justice, I think it well to make a brief statement of my view. This case is

brought by, and presented from the standpoint of, a woman employe. The minimum-wage law for women, the constitutionality of which is challenged in this case, is an act passed in the public interest, and by way of protection to a class which might reasonably be considered as needing protection, viz., the women who must labor in order to live. It would seem that the right of this class to live on a barely decent level, and the right of the public to have them so live, should outweigh the right of those who do not need to work in order to live, and who therefore are merely asserting a right to earn money and thereby accumulate property. If a woman is willing to work for less than a decent-living wage it must be because she has other means of livelihood, or because she is willing to live below that level. She ought not to be allowed to live below that level, if that means that the woman beside her, who is trying to live decently, will be dragged down with her. If she has other means of livelihood, then she ought not so to compete with those who have none that they will be reduced to squalor or required to resort to immoral means of living. The public interest in the purposes of the act is too obvious to call for explanation or comment. Congress has made this law with the declared purpose of protecting and promoting the public health, morals and welfare, by making it illegal to employ women at a wage which will not afford them a decent living. The machinery provided is for the purpose of ascertaining the lowest decent-living wage. We must assume that such ascertainment is possible, and that in a given case it has been reached, unless it is alleged and shown, that the action taken
59 is arbitrary, confiscatory or otherwise high-handed; and no such allegation is here made, although the case presented appears to be one of those cases of individual hardship which are possible under any law.

WENDELL P. STAFFORD,
Justice.

Mr. Justice Stafford of the Supreme Court of the District sat in place of Mr. Justice Robb.

(Endorsed:) No. 3467. Willie A. Lyons, appellant, vs. Jesse C. Adkins et al. Concurring opinion by Mr. Justice Stafford. Court of Appeals, District of Columbia. Filed Jun. 6, 1921. Henry W. Hodges, Clerk.

60 Monday, June 6th, A. D. 1921.

* * * * * * *

April Term, 1921.

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per MR. CHIEF JUSTICE SMYTH,
June 6, 1921.

Mr. Justice Stafford concurring.
Mr. Justice Van Orsdel dissenting.

61 Monday, June 6th, A. D. 1921.

* * * * * * *

April Term, 1921.

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per MR. CHIEF JUSTICE SMYTH,
June 6, 1921.

Mr. Justice Stafford concurring.
Mr. Justice Van Orsdel dissenting.

62 In the Court of Appeals of the District of Columbia.

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

v.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellees.

Petition for Rehearing.

Now comes the appellant, by its counsel, and respectfully petitions this Court for a rehearing and reargument of the above entitled cause for the reasons hereinafter appearing.

I.

This was argued on the 14th day of February, 1921, before Chief Justice Smyth, Justice Van Orsdel, and Justice Stafford, sitting in the place of Justice Robb, temporarily absent.

Shortly before the time of the hearing, a voluminous brief was filed by Felix Frankfurter, who was acting as Special Counsel
63 for the Minimum Wage Board. Leave was given to appellant to file a reply brief, which was filed shortly after the hearing. Several weeks after all briefs were in and the case was finally submitted, the Supreme Court of the United States decided a case of great importance, involving points vital to the controversy in this proceeding. We refer to the case of Block v. Hirsh, decided April 18, 1921, relating to the validity of the Ball Rent Act for the District of Columbia. The opinion of the Supreme Court in that case was one of the most important handed down in recent times, involving as it did an interpretation of the Fifth and Fourteenth Amendments with relation to the power to fix prices by legislative action. We have had no opportunity to present to this Court the effect of that decision upon the issues in the present case, and we respectfully urged that in a matter of such serious moment as is the present question we should be allowed to present to this Court on rehearing and reargument a discussion of the determination of the Supreme Court of the United States in that case.

While the Supreme Court in Block v. Hirsh reversed this Court and held the Ball Act valid, the ground of the reversal and the limitations pointed out in the decision are so significant to the controversy now before the Court as to have, in our judgment,
64 controlling weight upon the question here presented. The Ball Rent Act provided in substance that the right of a tenant to occupy any rented property should continue notwithstanding the expiration of his term, subject to regulation of the rent by the Commission established by the Act, and this provision was

justified by Congress by the declaration that "it was made necessary by emergencies growing out of the war, embarrassing the Federal Government in the transaction of the public business," and was expressly limited to the time of the emergency, which was fixed at two years. It was contended that the Act was a violation of the Fifth Amendment as a deprivation of the rights of liberty and property, because it provided for the fixing of the price for the use of property, thus interfering with the liberty of contract.

To this contention the Supreme Court answered in language that has a direct bearing upon the case at bar. The Court says:

"The regulation is put and justified only as a temporary measure."

The Court then cited two cases where similar temporary measures had been sustained, Wilson v. New, 243 U. S. 332; Fort Smith & Western R. R. Co. v. Mills, 253 U. S. 206. It is important to note
that these two decisions related to temporary wage regulations,
65 and that the regulations sustained were justified only because, first, they were in the exercise of the power of Congress over interstate commerce; and, second, were temporary expedients to meet a crisis in interstate transportation, and were not intended to be permanent.

To make this clear, it is desirable to cite a few passages from the opinion in Wilson v. New, 243 U. S. 332. The language quoted, we submit, is most significant in its bearing upon the question presented in the case at bar, especially in view of the fact that this case is one of the two relied upon by the Supreme Court to sustain its position in the Block case. At page 345, the Court after referring to the power to fix an eight-Hour day and the power to continue wages in effect for a limited time, said:

"There is a very broad difference between the two powers exerted. The first, the eight-hour standard, is permanently fixed. The second, the fixing of the wage standard resulting from the prohibition against paying lower wages, is expressly limited to the time specified in Section 2. (Six months). It is, therefore, not permanent but temporary, leaving the employers and employees free as to the subject of wages to govern their relations by their own agreements after the specified time."

Again, at page 346, the Court stated the problem before it in this way:

"The question is this: Did Congress have power, under the
66 circumstances stated, that is, in dealing with the dispute between the employers and employees as to wages, to provide a permanent eight-hour standard and to create by legislative action a standard of wages to be operative upon the employers and employees for such reasonable time as it deemed necessary to afford an opportunity for the meeting of the minds of employers and employees on the subject of wages? Or, in other words, did it have the power, in order to prevent the interruption of interstate commerce, to exert its will to supply the absence of a wage scale resulting from

the disagreement as to wages between the employers and employees, and to make its will on that subject controlling for the limited period provided for?

(The quotations given are found on the pages cited by the Supreme Court in Block v. Hirsh in referring to Wilson v. New.)

The Court then put aside the question of the right to fix hours of labor as having previously been settled. Coming to the question of the right to meet temporary emergency in transportation in interstate commerce, the Court said:

"* * * conceding that, from the point of view of the private right and private interest, as contradistinguished from the public interest, the power exists between the parties, the employers and employees, to agree as to a standard of wages free from legislative interference, that right in no way affects the lawmaking power to protect the public right and create a standard of wages resulting from
67 a dispute as to wages and a failure therefore to establish by consent a standard."

And again:

"And this emphasizes that there is no question here of purely private right, since the law is concerned only with those who are engaged in a business charged with a public interest, where the subject dealt with as to all the parties is one involved in that business, and which we have seen comes under the control of the right to regulate to the extent that the power to do so is appropriate or relevant to the business regulated."

To leave the matter beyond doubt, the Court (page 347), after referring to the extent of power to regulate interstate commerce and prevent stoppage of interstate tranportation, said:

"It is also equally true that as the right to fix by agreement between the carrier and its employees a standard of wages to control their relations is primarily private, the establishment and giving effect to such agreed-on standard is not subject to be controlled or prevented by public authority."

The other opinion cited by the Supreme Court in the Block case is Fort Smith & Western R. R. Co. v. Mills, 253 U. S. 206. In that case the Adamson Law again came before the Supreme Court. Mr. Justice Holmes, delivering the opinion of the Court, expressly
68 limited the decision of Wilson v. New to the action of Congress exerted under its power to regulate commerce among the States, and for the purpose of tiding the country over a trouble that was temporary only. Mr. Justice Day, Mr. Justice Van Devanter, Mr. Justice Pitney, and Mr. Justice McReynolds agreed with this decision limiting the effect of the Adamson Law as stated. The Court in Ft. Smith & Western R. R. Co. v. Mills, sustained an agreement between the employer and employee, notwithstanding the Adamson Act, for less wages than those fixed by the Act.

The decisions of the Supreme Court in the two Adamson cases cited with approval in the recent Ball Rent Act case so clearly negative the right of Congress to fix wages in private business as a permanent measure that there can now be little room for doubt as to the view of the Supreme Court of the United States on the validity of a permanent wage law. Not only is this inference justified by the cases cited, but in the very Block case itself, the Supreme Court uses this most emphatic language:

"A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

The law now before this Court is a permanent change. We respectfully ask a reconsideration by this Court of its opinion on this subject in view of the latest expression of the Supreme Court
69 of the United States.

II.

No consideration is given in the opinion to the right to injunction, restraining the enforcement of the penalty provisions of the Minimum Wage Law until a final determination of the question of validity by the highest Court, notwithstanding that the majority of the Court is of opinion that the law is constitutional.

We beg to call attention to the case of Oklahoma Operating Co. v. Love, 252 U. S. 331, where the Supreme Court reversed the lower Court for not granting a temporary injunction restraining the enforcement of penalties until the case could be decided by the highest Court, notwithstanding that the lower court was of the opinion that the law was constitutional. The Court further stated:

"If upon final hearing, the maximum rates fixed should be found not to be confiscatory, a permanent injunction should nevertheless, issue to restrain enforcement of penalties accrued pendente lite, provided that it also be found that the plaintiff had reasonable ground to contest them as being confiscatory."

There can be no question but that the appellant in the case at bar has reasonable ground to contest the validity of the Mini-
70 mum Wage Law.

While the case above cited relates to the validity of an order on the ground that it constitutes a confiscation of property, the decision is based upon a long line of cases, beginning with Ex Parte Young (209 U. S. 123), in which cases, on many occasions, the Courts have enjoined the enforcement of penalty provisions of laws pending a final determination by the highest court, where injunction was sought because the only opportunity to test the law otherwise was by a violation and consequent heavy penalties, which acted as an effective deterrent.

While the cases of Ex Parte Young and the Oklahoma Operating Co. v. Love related to confiscatory rates, the same principle would apply to a law interfering with freedom of contract. Indeed, this

was expressly stated by the Supreme Court of the United States in Truax v. Raich, 239 U. S. 33.

The position we are urging is precisely the one taken by Baker and Page, Circuit Judges, and Anderson, District Judge, in Vandalia Coal Co. v. Special Coal & Food Commission of Indiana, 268 Fed. 572. In that case the sole question was whether an injunction should be granted pending a test of the law in the highest court. Among other things, the Court said:

"There is a fifth ground for granting the temporary in-
71 junction, in the showing of threats made by the Commission to exact the penalties. We should agree with the state that this ground for a temporary injunction, or any injunction, would not be tenable if we were enabled to read section 11 of the act with the same understanding that counsel for the state and the coal commission put upon it; but, as we read that section, we find no definite assurance that penalties, or prosecutions for penalties, will be suspended a day longer than the final decision in the Marion circuit court. There is no direct and clear, definite, positive assurance that the penalties, or other penalizing means, would be held in abeyance until the question had been carried to the highest court to which it can be carried."

In view of these decisions, we respectfully urge that we be given an opportunity to present to the Court our right to injunction pendente lite to restrain the enforcement of the penalty provisions of the Minimum Wage Law until a decision can be reached by the Supreme Court of the United States.

III.

This Court in the majority opinion has apparently made no distinction whatever between regulation of wages of minors and regulation of wages of adults. We respectfully urge that there is a most important distinction which goes to the very foundation of this case.

The regulation of the wages of minors is fully justified under
72 the Constitution because minors are the wards of the State and manifestly may be forbidden to make any contracts whatever, as, indeed, they are generally so forbidden. Adult women, on the other hand, are not wards of the State, but are citizens entitled to the protection of the Constitution as much as are men. We respectfully ask a consideration of this case with reference to the right to fix wages of adult citizens under the Fifth and Fourteenth Amendments separate and a part from the right of Congress or legislative bodies to regulate the conduct and contracts of wards of the State.

Wherefore, We pray that this case may be set down for rehearing and reargument, and that the mandate may be stayed until such rehearing is had and decision thereon rendered.

CHALLEN B. ELLIS,
Attorney for Appellant.

JOS. W. FOLK,
Of Counsel.

73 [Endorsed:] In the Court of Appeals of the District of Columbia. No. 3438. The Children's Hospital of the District of Columbia, a Corporation, Appellant, v. Jesse C. Adkins, et al., Appellees. Copy. Court of Appeals District of Columbia. Petition for Rehearing. Filed Jun. 14, 1921. Henry W. Hodges, Clerk. Law Offices, Ellis, Ferguson & Colquitt, Southern Building, Washington.

74 In the Court of Appeals of the District of Columbia.

No. 3467.

WILLIE A. LYONS, Appellant,

v.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN L. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellees.

Petition for Rehearing.

Now comes the appellant, by her counsel, and respectfully petitions this Court for a rehearing and reargument of the above entitled cause for the reasons set forth in the petition for rehearing in No. 3438, The Children's Hospital of the District of Columbia v. Jesse C. Adkins, et al., and prays that the case may be set down for rehearing and reargument, and that the mandate may be stayed until such rehearing is had and decision rendered thereon.

CHALLEN B. ELLIS,
Attorney for Appellant.

JOS. W. FOLK,
Of Counsel.

75 [Endorsed:] No. 3467. Willie A. Lyons, Appellant, vs. Jesse C. Adkins, et al., Appellees. Petition for Rehearing. Court of Appeals, District of Columbia. Copy. Filed Jun. 14 1921. Henry W. Hodges, Clerk. Law offices Ellis, Ferguson & Colquitt, Southern Building, Washington.

76 MEMORANDUM.—Copies of petitions for rehearing mailed by the Clerk to the Chief Justice, Justice Robb, Justice Van Orsdel and Justice Stafford.

77 Wednesday, June 22nd, A. D. 1921.

* * * * * * *

April Term, 1921.

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

JESSE C. ADKINS et al.

On consideration of the petition for a rehearing in the above entitled cause, It is ordered that said petition be and the same is hereby denied, and that the mandate be stayed until further order.

And it is further ordered that an injunction may issue, pending an appeal to the Supreme Court of the United States (if such appeal be prosecuted with diligence) restraining appellees from enforcing or attempting to enforce the act in issue, on giving bond, satisfactory to the Court, to pay all damages which any employee of appellant may sustain by reason of such injunction, with leave to said employees to unite in one action on the bond if so advised.

Per MR. CHIEF JUSTICE SMYTH,
June 22, 1921.

78 Wednesday, June 22nd, A. D. 1921.

* * * * * * *

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS et al.

On consideration of the petition for a rehearing in the above entitled cause, It is ordered by the Court that said petition be and the same is hereby denied, and that the mandate be stayed until further order.

79 MEMORANDUM.—The foregoing orders denying a rehearing were made upon letters to the Clerk from Chief Justice Smyth and Justice Stafford directing their entry.

MEMORANDUM.—July 6. Justice Van Orsdel, by letter to the Clerk, voted to sustain motions for rehearing.

MEMORANDUM.—July 9. Justice Robb, by letter to the Clerk, voted to sustain motions for rehearing.

80 In the Court of Appeals of the District of Columbia.

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

v.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellees.

Motion to Set Aside Order Denying Rehearing.

Comes now the appellant, by its counsel, and moves the Court to set aside and vacate the order passed herein on the 22nd day of June, 1921, denying a motion for a rehearing theretofore filed by the appellant, on the ground that said order denying said motion was not passed upon or concurred in by a majority of the members of this Court as constituted at the time said order was entered or at the time said motion for a rehearing was filed.

CHALLEN B. ELLIS,
Attorney for Appellant.

JOS. W. FOLK,
Of Counsel.

Service of the foregoing motion acknowledged, this 11th day of July, 1921.

(Signed) F. H. STEPHENS,
Corporation Counsel.

81 [Endorsed:] No. 3438. In the Court of Appeals of the District of Columbia. The Children's Hospital, etc., Appellant, v. Jesse C. Adkins, et al., Appellees. Motion to set Aside Order Denying Rehearing. Court of Appeals, District of Columbia. Copy. Filed Jul. 11 1921. Henry W. Hodges, Clerk. Law offices Ellis, Ferguson & Colquitt, Southern Building, Washington.

82 In the Court of Appeals of the District of Columbia.

No. 3467.

WILLIE A. LYONS, Appellant,

v.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellees.

Motion to Set Aside Order Denying Rehearing.

Comes now the appellant, by her counsel, and moves the Court to set aside and vacate the order passed herein on the 22nd day of

June, 1921, denying a motion for a rehearing theretofore filed by the appellant, on the ground that said order denying said motion was not passed upon or concurred in by a majority of the members of this Court as constituted at the time said order was entered or at the time said motion for a rehearing was filed.

CHALLEN B. ELLIS,
Attorney for Appellant.

JOS. W. FOLK,
Of Counsel.

Service of the foregoing motion acknowledged, this 11th day of July, 1921.

(Signed) F. H. STEPHENS,
Corporation Counsel.

83 [Endorsed:] No. 3467. In the Court of Appeals of the District of Columbia. Willie A. Lyons, Appellant, v. Jesse C. Adkins, et al., Appellees. Motion to Set Aside Order Denying Rehearing. Court of Appeals, District of Columbia. Copy. Filed Jul. 11, 1921. Henry W. Hodges, Clerk. Law offices Ellis, Ferguson & Colquitt, Southern Building, Washington.

84 Wednesday, July 13th, A. D. 1921.

* * * * * * *

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

JESSE C. ADKINS et al.

On consideration of the appellant's motion for a rehearing in the above entitled cause, it is by the Court this day ordered that said motion be, and the same is hereby granted, and that this cause be and the same is hereby restored to the Calendar for rehearing in due course. Mr. Chief Justice Smyth dissenting.

85 Wednesday, July 13th, A. D. 1921.

* * * * * * *

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS et al.

On consideration of the appellant's motion for a rehearing in the above entitled cause, it is by the Court this day ordered that said motion be, and the same is hereby granted, and that this cause be

and the same is hereby restored to the Calendar for rehearing in due course. Mr. Chief Justice Smyth dissenting.

86 MEMORANDUM.—The foregoing orders granting a rehearing were entered upon the above letters from Justice Robb, dated July 9, and from Justice Van Orsdel, dated July 6, directing their entry.

87 In the Court of Appeals of the District of Columbia.

Equity. No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Respondents,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOSEPH A. BERBERICH, Constituting the Minimum Wage Board of the District of Columbia, Defendants.

Motion to Set Aside the Order Granting Rehearing.

Now comes the defendant in the above entitled cause by its attorney and moves the Court to set aside and annul the order of July 13th, 1921, granting the motion for a rehearing in the above cause and to restore the order of June 22d denying the motion for a rehearing, or to pass a new order denying said motion.

For grounds for the foregoing motion, defendant says that the judges who sat in the argument of this cause, including the temporary judge called from the Supreme Court of the District of Columbia, and no other, have the jurisdiction or authority to pass upon the said motion for a rehearing and that the authority of the said judges, including the temporary judge, subsist until the final determination of the cause.

F. H. STEPHENS,
Attorney for Defendants.

Service of motion & memorandum acknowledged this 26th day of September, 1921.

CHALLEN B. ELLIS,
By A. H. FERGUSON,
Atty. for Appellant.

Endorsed: No. 3438. Children's Hospital of the District of Columbia, a corporation, vs. Jesse C. Adkins, et al., defendants. Motion to set aside the order granting rehearing. Court of Appeals, District of Columbia. Filed Sep. 26, 1921. Henry W. Hodges, Clerk.

88 In the Court of Appeals of the District of Columbia.

Equity. No. 38293.

No. 3467.

WILLIE A. LYONS, Plaintiff,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOSEPH A. BERBERICH, Constituting the Minimum Wage Board of the District of Columbia, Defendants.

Motion to Set Aside the Order Granting Rehearing.

Now comes the defendant in the above entitled cause by its attorney and moves the Court to set aside and annul the order of July 13th, 1921, granting the motion for a rehearing in the above cause and to restore the order of June 22nd, denying the motion for a rehearing, or to pass a new order denying said motion.

For grounds for the foregoing motion, defendant says that the judges who sat in the argument of this cause, including the temporary judge called from the Supreme Court of the District of Columbia, and no other have the jurisdiction or authority to pass upon the said motion for a rehearing and that the authority of the said judges, including the temporary judge subsists until the final determination of the cause.

F. H. STEPHENS,
Attorney for Defendants.

Service of motion & memorandum acknowledged this 6th day of Oct., 1921.

CHALLEN B. ELLIS,
Attorney for Appellant.

89 [Endorsed.] No. 3467. Court of Appeals, D. C. Equity No. 38293. Willie A. Lyons, vs. Jesse C. Adkins, et al. Motion to set aside the order granting rehearing. Copy. Court of Appeals, District of Columbia. Filed Oct. 6, 1921. Henry W. Hodges, Clerk. Francis H. Stephens, Corporation Counsel, Attorney for Defendants.

90 Friday, October 7th, A. D. 1921.

* * * * * * *

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, &c., Appellant,

vs.

JESSE C. ADKINS et al.

and

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS et al.

On consideration of the motion to set aside the order granting a rehearing in the above entitled causes, it is ordered by the Court that said motion be and the same is hereby denied. Mr. Chief Justice Smyth dissents.

91 Monday, October 10th, A. D. 1921.

* * * * * * *

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia,

and

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

On motion, leave is granted the appellees to file an additional brief herein. The reargument in the above entitled causes was commenced by Mr. C. B. Ellis, attorney for the appellants.

92 Tuesday, October 11th, A. D. 1921.

* * * * * * *

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia,

and

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

The reargument in the above entitled causes was continued by Mr. C. B. Ellis, attorney for the appellants, and by Mr. Felix Frankfurter, attorney for the appellees, and was concluded by Mr. J. W. Folk, attorney for the appellants. On motion the appellants are allowed to file a copy of the oral argument herein.

93 Court of Appeals of the District of Columbia.

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation, Appellant,

v.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellees.

No. 3467.

WILLIE A. LYONS, Appellant,

v.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellees.

Opinion.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

These cases present the question of the constitutionality of the Minimum Wage Law of the District of Columbia, Act of Congress, September 19, 1918, 40 Stat., L., 960.

By the act in question, the Commissioners of the District of Columbia were authorized to appoint a minimum wage board composed of three members. This board is vested with power, after investigation as provided in the statute, to fix the minimum wages to be paid women employees in any occupation in the District of Columbia, where the board from its investigation is of opinion that women workers are receiving inadequate wages. The act also provides that after a minimum wage has been fixed, any employer or agent, or any officer, director, or agent of any corporation, refusing to comply with the order of the board, shall be guilty of a criminal offense and upon conviction punished by fine or imprisonment, or both.

By a further provision of the act, the decision of the board, fixing a minimum wage, is made final, and no appeal to the courts from such decision is allowed except upon error of law. The board is given authority to examine the books of every individual or corporation, employing women in the District of Columbia, to ascertain the names of women employees and the wages paid, a register of which every employer is required to keep. It is made a criminal offense for any employer or his agent to discharge or discriminate in any manner against any employee who serves, or is about to serve on any conference called by the board, or who has testified or is about to testify at any conference, or any employee whom the employer believes may serve on any conference or may testify "in any investigation or proceedings under or relative to this act."

Section 13, of the act, provides: "That for any occupation in which only a minimum time-rate wage has been established, the board may issue to a woman whose earning capacity has been impaired
94 by age or otherwise, a special license authorizing her employment at such wage less than such minimum time-rate wage as shall be fixed by the board and stated in the license."

In case No. 3438, The Children's Hospital, a District of Columbia corporation, seeks to perpetually restrain the minimum wage board from enforcing an order requiring it to pay its women employees not less than $16.50 per week, or $71.50 per month. In case No. 3467, the appellant, Willie A. Lyons, was operating an elevator in the Congress Hotel in the City of Washington, at a wage of $35 per month and two meals per day, when the board issued an order forbidding any hotel keeper to employ a woman or minor girl "at a rate of wages of less than 34½ cents per hour, $16.50 per week, or $71.50 per month." It is to restrain the enforcement of this order that appellant Lyons filed her bill in the court below.

From decrees of the Supreme Court of the District of Columbia dismissing the bills, these appeals are prosecuted.

We will not stop to analyze the records in these cases for the purpose of determining the sufficiency of the averment to sustain the prayers for extraordinary relief. The single question presented, involves the power of Congress, in the light of the limitations of the Constitution of the United States, to enact this legislation. If the act is constitutional, unquestionably the averments are not sufficient

to justify the interposition of equity; but any attempt to enforce an unconstitutional law, resulting in an invasion of property rights, is subject to equitable restraint. Truax v. Raich, 239 U. S., 33. The constitutionality of the act is assailed upon the theory that the power exerted extends to the regulation and limitaiton of the freedom of contract between private individuals, and that it is the initial step toward unlimited Federal price-fixing legislation.

The act clearly was neither passed to meet a temporary emergency, nor "to tide over a passing trouble." Its interpretation may be pursued without reference to the modern rule of emergency resorted to in support of certain so-called war legislation; nor does it appear that any situation has arisen in the District of Columbia, in respect of women workers, which has become so "publicly notorious" as to justify the inference of an emergency. True, Congress declared the purpose of the act to be "to protect the women and minors of the District from conditions detrimental to their health and morals resulting from wages which are inadequate to maintain decent standards of living." It then undertakes to direct the interpretation of the act and forbids appeal to the courts, except upon questions of law. While statements of fact by a legislature, as an inducement for the enactment of a law, are entitled to respect, they are by no means conclusive upon the courts; nor are the limitations upon interpretation and appeal, since the courts will have the last word in the event of any arbitrary action on the part of the board in carrying out the provisions of the act.

Another contention may be disposed of in a word. True, a number of states have enacted similar laws and they have generally been upheld by the state courts, but that by no means forecloses consideration of the present case. In Coppage v. Kansas, 236 U. S., 1, the court condemned an act making it a criminal offense for an employer to prevent, by contract, his employees joining labor unions, notwithstanding such laws existed in thirteen states and the territory of Porto Rico.

We are here called upon to weigh the subject-matter of certain legislation in the balance of the Constitution, the general power of Congress to fix wage contracts between private individuals. If Congress may establish a minimum wage for women, it may establish a maximum wage, or it may name a fixed wage. If it may regulate wages for women, it may by the exercise of the same power establish the wages to be paid men. The power of Congress to fix wages between private individuals is either constitutional or unconstitutional. There is no leeway for legislative or judicial discretion. A fundamental principle is involved; and it does not lie in the courts to declare a law fixing the wages of women constitutional and a law fixing the wages of men unconstitutional. The moral stimulus in the one instance is no greater than in the other. If higher wages are essential to preserve the morals of women, they are equally essential to preserve the morals of men.

This leads to another angle. If the law is to be equitably enforced, it requires a most careful and judicious inquiry by the board into living conditions—the cost of rent, clothes, food and recreation.

If the power, therefore, exists to fix wages in the interest of good morals and the promotion of the general welfare, the power must likewise be conceded to fix the prices of all commodities entering into the determination of an equitable wage. In no other way can justice be accorded. The wage fixed for an employer to pay his employee can not be justified if based upon the unrestrained prices which the employee may have to pay the merchant for food and clothes, or the landlord for rent. The logical result of such a course relegates the whole matter of prices to the realm of legislation.

The liberty protected by the Fifth and Fourteenth Amendments to the Constitution includes the freedom of contract and the right to contract with relation to one's business. "It is undoubtedly true, as more than once declared by this court, that the general right to contract in relation to one's business is part of the liberty of the individual, protected by the Fourteenth Amendment." Muller v. Oregon, 208 U. S., 412, 421. In Coppage v. Kansas, 236 U. S., 1, 14, the court, affirming the doctrine announced in the Muller case, said: "The principle is fundamental and vital. Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money."

The public safety and welfare may justify the legislature in limiting the hours of labor in mines and other hazardous industries, and require safeguards to be employed in conducting dangerous
95 occupations. Such regulations, however, affect only the mode of operation and do not invade the domain of prices. They are easily distinguished from the purely economic question of how much the employer shall pay the employee for his services. In one case the business conducted is so inherently dangerous that its regulation, as to methods of operation, becomes a valid exercise of the police power. The public health and safety demand, not that the business be confiscated, not that proprietorship therein be curtailed or limited, not that the economic control thereof may be in the least affected, but that the business be so conducted that the public health and safety may not be seriously endangered.

Legislation tending to fix the prices at which private property shall be sold, whether it be a commodity or labor, places a limitation upon the distribution of wealth and is aimed at the correction of the inequalities of fortune which are inevitable under our form of government, due to personal liberty and the private ownership of property. These principles are embodied in the Constitution itself, and to interfere with their freedom of operation is to deprive the citizen of his constitutional rights. In other words, regardless of public sentiment or popular demand, such a radical change, if deemed

necessary, should not be accomplished by legislative enactment or judicial interpretation, but by way of amendment in the orderly way provided.

Alexander Hamilton, whose keen vision seems to have forecast the dangers that would arise in the future, threatening the stability and the life of the republic, left a timely warning against attempted legislative or judicial amendment in response to public clamor. He declared it to be a "fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authorative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community." The Federalist, Chap. 78.

The police power can not be employed to level inequalities of fortune. Private property can not by mere legislative or judicial fiat be taken from one person and delivered to another, which is the logical result of price-fixing. As was said by Mr. Justice Pitney, in the Coppage case: "But the Fourteenth Amendment, in declaring that a state shall not 'deprive any person of life, liberty or property without due process of law,' gives to each of these an equal sanction; it recognizes 'liberty' and 'property' as co-existent human rights, and debars the states from any unwarranted interference with either. And since a state may not strike them down directly it is clear that it may not do so indirectly, as by declaring in effect that the public good requires the removal of those inequalities that are but the normal and inevitable result of their exercise, and then invoking the police power in order to remove the inequalities, without other objects in view. The police power is broad, and not easily defined, but it can not be given the wide scope that is here asserted for it, without in effect nullifying the constitutional guaranty."

In Frisby v. United States, 157 U. S., 160, 166, the court, after reviewing a number of instances in which the police power had been validly exercised, made the following pertinent exception: "The possession of this power by the government in no manner conflicts with the proposition that, generally speaking, every citizen has a right freely to contract for the price of his labor, services, or property."

But it is suggested that the act may be sustained, since Congress is legislating for a class. The constitutional limitations upon Con-

gress involve fundamental principles of human rights reserved to the whole people and not to any favored class of citizenship. They are for the protection alike of the rich and the poor, the strong and the weak, the high and the low, and may not, either by legislative or judicial fiat, be used to extend special protection or privileges to any particular class of citizens. No reason is apparent why the operation of the law should be extended to women to the exclusion of men, since women have been accorded full equality with men in the commercial and political world. Indeed, this equality in law has been sanctioned by constitutional amendment; and so fixed has the tendency in this direction become established in English speaking lands, that the opportunity for official and business preferment, upon complete equality with men, is limited only by the scope of her aspirations.

The right of Willie Lyons to contract her labor in any lawful calling is a property right, of which, if the property clauses of the constitution mean anything, she can not be deprived. When the minimum wage of $71.50 per month for women was fixed by the board in this District, Willie Lyons was operating an elevator in the Congress Hotel at a wage of $35 per month and two meals per day. As a result she lost her position. The law worked but one way. The hotel manager was not compelled to employ her at a fixed wage, and her position went to a man, who was willing to perform the service at a lower wage than that fixed by the Board. She was without the power to compel her employment, and, because of her inability to measure up to the minimum scale, the law to promote the good morals and general welfare of the community cast her adrift. She was not even in position to avail herself of the provisions of section 13, of the act, since she was fully qualified to perform the work for which she was employed. Her earning capacity as an elevator operator,
was not "impaired by age or otherwise." The only way,
96 therefore, by which she could have been saved from competi-
tive injury would have been to have fixed the minimum wage of elevator operators at $32.50 per month and two meals per day. Unless, therefore, the board is to be accorded arbitrary power, section 13 has no application to her case.

The sacredness of the right of the citizen to freely contract his labor was upheld in Adair v. United States, 208 U. S., 161, 174, where the court, speaking through Mr. Justice Harlan, said: "The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. * * * In all such particulars the employer and employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

We come now to the consideration of two recent cases upon which counsel for appellee chiefly rely. In Wilson v. New, 243 U. S., 332, known as the Adamson Law case, the court was considering a statute establishing an eight-hour working day for railway em-

ployees on interstate railroads, and incidentally providing that the then existing scale of wages should be continued in force until the parties could agree. The court clearly pointed out that the law constituted a regulation of a business impressed with a public interest. It affected an instrumentality of interstate commerce, the control of which, is expressly reserved to Congress in the Constitution. The court held that Congress not only had power to legislate for the protection of the public interest in keeping open the channels of commerce, but possessed authority to regulate matters incidental to the proper exercise of that power. In upholding the provisions of the act continuing the wage scale in force until the parties could agree, the court said: "And this emphasizes that there is no question here of purely private right since the law is concerned only with those who are engaged in a business charged with a public interest where the subject dealt with as to all the parties is one involved in that business and which we have seen comes under the control of the right to regulate to the extent that the power to do so is appropriate or relevant to the business regulated."

In no respect did the court even intimate that the power of Congress to fix wages for railway employees could be invoked, except where, through failure of agreement, commerce is jeopardized. The authority of Congress is expressed in the opinion in a single sentence: "Here again it is obvious that what we have previously said is applicable and decisive, since whatever would be the right of an employee engaged in a private business to demand such wages as he desires, to leave the employment if he does not get them and by concert of action to agree with others to leave upon the same condition, such rights are necessarily subject to limitation when employment is accepted in a business charged with a public interest and as to which the power to regulate commerce possessed by Congress applied and the resulting right to fix in case of disagreement and dispute a standard of wages as we have seen necessarily obtained."

The Adamson Law was not a wage-fixing statute and the court so held. The power of Congress to continue the wage scale in force, was limited to its power to legislate generally in respect to commerce, and to the failure of the parties to agree upon a satisfactory scale of wages. In no place is it intimated that Congress, even in the exercise of its delegated authority to regulate commerce, would have power to legislate upon the question of wages where an agreed scale existed.

In Block v. Hirsch, 256 U. S., 135, involving the validity of the Ball Rent Act for the District of Columbia, the court held the renting of property in the District of Columbia, under existing conditions, to be a business affected with a public interest. The act, however, was upheld only when the theory that the power to fix rentals is limited to an existing emergency. The act was held to be a temporary measure "made necessary by emergencies growing out of war * * * embarrassing the Federal Government in the transaction of the public business." This act was passed to correct an abuse which had become "publicly notorious," and the

emergency which had made this condition possible was held to justify the act. "The regulation is put and justified only as a temporary measure. See Wilson v. New, 243 U. S., 332, 345, 346. Fort Smith & Western R. R. Co. v. Mills, 253 U. S., 206. A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

In the recent decision of the Supreme Court of the United States, Edgar A. Levy Leasing Co., Inc. v. Jerome Siegel,—U. S.—upholding the New York Rent Law, the court, placing its decision upon the same basis as in the Hirsch case, said: "In terms the acts envolved are 'emergency' statutes and, designed as they were by the legislature to promote the health, morality, comfort and peace of the people of the state, they are obviously a resort to the police power to promote the public welfare. They are a consistent interrelated group of acts essential to accomplish their professed purposes. The warrant for this legislative resort to the police power was the conviction on the part of the state legislators that there existed in the larger cities of the state a social emergency, caused by an insufficient supply of dwelling houses and apartments, so grave that it constituted a serious menace to the health, morality, comfort, and even to the peace of a large part of the people of the state. That such an emergency, if it really existed, would sustain a resort, otherwise valid, to the police power for the purpose of dealing with it can not be doubted, for, unless relieved, the public welfare would suffer in respects which constitute the primary and undisputed, as well as the most usual basis and justification, for exercise of that power."

We are of the opinion that the act can not be upheld upon the theory that the contracting for labor between private individuals is a business impressed with a public interest. Unlike the op-
97 eration of an elevator to handle indiscriminately the grain of the public, and the rates to be charged for such service, (Munn v. Illinois, 94 U. S., 113), or the trust relation arising from the depositing of funds in banks. (Noble State Bank v. Haskell, 219 U. S., 104), or the rates to be charged the public by insurance companies, (German Alliance Insurance Company v. Kansas, 233 U. S., 389), we are here dealing with a private business, conducted between private individuals, in which the public has no direct economic interest. It follows, therefore, that if the doctrine of "public interest" is to be extended to the point of fixing by law the rate at which the individual citizen may contract his labor, by placing a limitation upon the freedom of private contract between employer and employee, it is difficult to understand just where the limitations of the extension of police power may be reached. It amounts to converting the police power into a convenient experimental agency for distinguishing, extending or abrogating express limitations of the Constitution.

The difficulty arises, we think, from the failure to distinguish between legislative discretion and legislative power. A mere declaration of necessity assumes the existence of power to act, and where there is power, legislative discretion, in its exercise, will be accorded

favorable presumption; but if there is a total lack of power, no jurisdiction is resposed in the legislature to determine for itself the possession of the power, and a declaration to that effect is without persuasive force. As the court said, in Truax v. Raich, supra: "We have frequently said that the legislature may recognize degrees of evil and adapt its legislation accordingly, but underlying the classification is the authority to deal with that at which the legislation is aimed." We are here dealing with the power of Congress to restrict freedom of contract which is expressly guaranteed in the Constitution. In the Coppage case, the court held that "the mere restriction of liberty or of property rights can not of itself be denominated 'public welfare' and treated as a legitimate object of the police power; for such restriction is the very thing that is inhibited by the (Fourteenth) Amendment."

Coming now to the consideration of the vindication of the act as a proper exercise of the police power, we are of the opinion that it can not be upheld. High wages do not necessarily tend to good morals, or the promotion of the general welfare. The standard of virtue and morality is no higher among the prosperous than among the poor. Their worth can not be measured in dollars and cents, or promoted by a legal subsidy. Never have wages been so high as since the outbreak of the late war, and never in the history of the republic has crime been so universal; and this condition, it must be conceded, has made a like unfavorable impression upon the morals of the people. A wage based upon competitive ability is just, and leads to frugality and honest industry, and inspires an ambition to attain the highest possible efficiency, while the equal wage paralyzes ambition and promotes prodigality and indolence. It takes away the strongest incentive to human labor, thrift and efficiency, and works injustice to employee and employer alike, thus affecting injuriously the whole social and industrial fabric. Experience has demonstrated that a fixed minimum wage means, in the last analysis, a fixed wage; since the employer, being compelled to advance some to a wage higher than their earning capacity, will, to equalize the cost of operation, lower the wage of the more competent to the common basis.

Any intimation that the Constitution is flexible, even in response to the police power, is unsound. Powers expressly delegated by the Constitution—such, for example, as the regulation of interstate commerce—may be extended to meet changing conditions, providing it can be accomplished without altering fundamental principles; but the principles are immutable, not elastic or subject to change. That a state may not impair the obligations of a contract, or that no person can be deprived of his property without due process of law, are principles fundamental, and if the legislature, in response to public clamor for an experimental social reform, may break down these constitutional guaranties by calling an act a "health law," or a "public morality law," or a "public welfare law," all guaranties of the Constitution, under the alleged exercise of the police power, may be changed, modified or totally eliminated.

Nor is the extent of such modification a matter of judicial discretion. To hold that the courts may declare a law, violating the same principle, constitutional under one state of fact, and unconstitutional under another, is the exercise of arbitrary power—a power said to exist nowhere in our system of government. And nowhere could it be lodged with more dangerous results than in the courts.

The tendency of the times to socialize property rights under the subterfuge of police regulation is dangerous, and if continued will prove destructive of our free institutions. It should be remembered that of the three fundamental principles which underlie government, and for which government exists—the protection of life, liberty and property,—the chief of these is property,—not that any amount of property is more valuable than the life or liberty of the citizen, but the history of civilization proves that when the citizen is deprived of the free use and enjoyment of his property, anarchy and revolution follow, and life and liberty are without protection.

The highest freedom consists in obedience to law, and a strict adherence to the limitations of the Constitution. In no way can the freedom of the citizen be more effectually curtailed and ultimately destroyed than by a deprivation of those inherent rights safeguarded by our fundamental law. The security of society depends upon the extent of the protection afforded the individual citizen under the Constitution against the demands and incursions of the government. The only tyranny the citizenship of this republic need fear is from the government itself. The character and value of government is measured by the security which surrounds the individual in the use and enjoyment of his property. These rights will only remain secure so long as the Bill of Rights—the first ten amendments of the Constitution—are construed liberally in favor of the individual and strictly against the government. They
98 were early adopted because of a wide-spread apprehension that the time might come when the government would assume to trespass upon those inalienable individual rights announced in the Declaration of Independence and afterwards incorporated in the Bill of Rights. Courts, therefore, should be slow to lend aid to the government in this modern tendency to invade individual property rights. "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be obsta principiis." Boyd v. United States, 116 U. S., 616, 635.

No greater calamity could befall the wage earners of this country than to have the legislative power to fix wages upheld. It would deprive them of the most sacred safeguard which the Constitution

affords. Take from the citizen the right to freely contract and sell his labor for the highest wage which his individual skill and efficiency will command, and the laborer would be reduced to an automaton—a mere creature of the state. It is paternalism in the highest degree, and the struggle of the centuries to establish the principle that the state exists for the citizen, and not the citizen for the state, would be lost.

If, in the exercise of the police power for the general welfare, power lies in the legislature to fix the wage which the citizen must accept, or choose idleness, or, as in the case of Willie Lyons, be deprived of the means of earning a living, it is but a step to a legal requirement that the industrious, frugal, economical citizen must divide his earnings with his indolent, worthless neighbor. The modern tendency toward indiscriminate legislative and judicial jugglery with great fundamental principles of free government, whereby property rights are being curtailed and destroyed, logically will, if persisted in, end in social disorder and revolution. Let no one imagine for a moment, that our civilization is such that property rights can thus be socialized without the grossest abuse of the privileges granted, or that the restraint of the abuses can be left with safety to legislative or judicial discretion.

The decrees are reversed with costs, and the causes remanded for further proceedings, not inconsistent with this opinion.

Mr. Chief Justice Smyth, dissenting:

Before discussing the constitutionality of the act, it is necessary to consider matters not referred to in the majority opinion, and which are essential to a correct disposition of the cases.

These cases were decided on the 6th day of June, 1921, and motions for rehearing denied on June 22, same year. In my opinion both cases were finally disposed of then, and the court is without jurisdiction to render the present decisions.

At the time the causes were first called for hearing, Mr. Justice Robb was unable to sit in them because of illness. Pursuant to section 225 of the Code, the other justices designated Mr. Justice Stafford of the Supreme Court to take his place. The order designating him provided that he should "sit as a member of this court in the absence of Mr. Justice Robb in the hearing and decision of the following cases," among which were those now under consideration. Mr. Justice Stafford took his seat on the bench, participated in the hearing of the cases, and in their consideration and final disposition by the court. On June 6 of the court sustained the constitutionality of the act, and affirmed the decrees of the trial court. The opinion was by the Chief Justice, Mr. Justice Stafford announcing a short concurring opinion and Mr. Justice Van Orsdel dissenting. A motion for rehearing in each case was filed by the appellants on June 14, and on June 22 was considered and overruled by a majority of the court, consisting of the Chief Justice and Mr. Justice Stafford, Mr. Justice Van Orsdel being absent. Section 225 of the Code provides that where one member of the court is absent or disqualified a ma-

jority may rule on motions. At the time the motions for rehearing were overruled, an order was made that the mandates be withheld until the appellants had a reasonable opportunity to apply to the Supreme Court of the United States for a review. About this time the members of the court separated for the summer vacation. The motions for rehearing did not challenge in any way the right of Mr. Justice Stafford to participate in the disposition of them, and the question as to his right to do so was not before the Chief Justice and Mr. Justice Stafford at the time they overruled the motions, and never was submitted to them, nor had any member of the court been asked to pass on it prior to the overruling of the motions, so far as I know.

June 25, three days after the motions for rehearing had been overruled, Mr. Justice Robb wrote to the Chief Justice, as follows: "Within fifteen days after the decision was announced in the Minimum Wage cases counsel sent me their application for a rehearing, and insisted, and stil insist, that I vote thereon. While I incline to the view that Justice Stafford no longer has any jurisdiction in these cases, I wish to look up the authorities, if any there be, before deciding definitely." In answer the Chief Justice said the motions had already been passed upon and he ventured to suggest reasons which then occurred to him for believing that Justice Stafford had acted within his authority when he united with the Chief Justice in overruling the motions. To this no answer was made, but on July 1 Justice Robb wrote, saying: "After mature consideration I have decided to vote for a rehearing in the Minimum Wage cases, and I am advising counsel to that effect, as well as Justice Van Orsdel." Thereafter, in pursuance of directions from him and Mr. Justice Van Orsdel, the clerk entered an order granting a rehearing in both cases, the Chief Justice dissenting.

About ten days after Mr. Justice Robb had notified the
99 Chief Justice of his intention to vote, motions were filed to set aside the order made by Justice Stafford and the Chief Justice. These motions were based upon the ground that the order was not passed by a majority of the court as constituted at the time the order was made. This was the first time the right of Justice Stafford was questioned by any pleading or other paper filed in the cases, or by any other method addressed to the court. These motions were sustained July 13, Mr. Justice Robb and Mr. Justice Van Orsdel concurring and the Chief Justice dissenting.

It would seem from the foregoing that the appellants, finding themselves defeated, sought a justice who had not sat in the case but who, they believed, would be favorable to them, and induced him, by an appeal directed to him personally, to assume jurisdiction and join with the dissenting justice in an attempt to overrule the decisions of the court. I shall not characterize such practice—let the facts speak for themselves.

What arguments, if any, were advanced to Mr. Justice Robb by counsel for appellants when they made their application to him, I do not know, nor am I aware of the basis on which he rested his conclusion that he had a right to vote on the motions. But from

what I have said, it is manifest, I think, that he proceeded upon the assumption that he alone had the power to decide the question; in other words, that it was not a matter for consideration by the court. I am unable to agree to this. Whether or not he had such power involved a construction of the Code authorizing the calling in or a substitute justice. Of course, where the question is as to whether or not a judge is prejudiced against one of the parties, or interested in the subject of the litigation, it is usual for him to decide the matter for himself, except in cases controlled by section 20 of the Judicial Code. But the question here involved relates not only to the power of Justice Robb, but also to that of Justice Stafford. Acting by virtue of the statute, two members of this court had designated Justice Stafford to sit "in the hearing and decision of these cases,' which, of course, included the disposition of the motions for rehearing, for the cases would not be decided finally until those matters were ruled upon. Mr. Justice Robb attempted to set aside that order and displace Justice Stafford. I submit he was without power to do so. The question was for the court—not for one member of it only.

But had Justice Stafford jurisdiction of the cases when he voted on the motions? The Code section to which reference has already been made provides that the substitute justice shall temporarily fill the vacancy created by the absence of the regular justice and shall sit in the court "and perform the duties of a member thereof while such vacancy or vacancies shall exist." When does the vacancy cease to exist? When the regular justice is able to return to his duties, when he actually does so, or when the substitute justice has completed the work which he had properly entered upon before the return of the regular justice? It seems to me the latter must be the time. Unless this view is taken, great inconvenience would follow, and the business of the court would be much retarded. Suppose that at the time the regular justice returns to the court, the substitute justice had participated in the hearing of twenty-five cases then under advisement, can it be that his authority to further act, so far as those cases are concerned, had come to an end? If so, the cases would have to be restored to the docket for reargument before a court comprising the three regular members. I do not believe the act means this. My opinion is that, while the substitute justice may not enter upon any new work after the return of the regular justice, he has the authority, and it is his duty, to complete the work undertaken while the regular member of the court was absent. This has been the practice, without a single exception, save the present case, since the organization of the court. Shore v. Splain, 49 App. D. C., 6, 258 Fed., 150. After the motions for rehearing were granted in these cases, Mr. Justice Robb refused to consider a motion for rehearing in a case in which he had not sat (Clement v. Roberts, 273 Fed., 757), and it was necessary to send for Mr. Justice Hitz, who took part in the hearing and decision of the case, to vote on the motion, there being a division of opinion among the other justices. At this moment a substitute justice is considering cases in the hearing of which he participated, though the justice whose place he took

has returned to the court and is engaged in the discharge of his duties.

Recently the court, after a very careful consideration of the authorities, unanimously decided a similar question (Shore v. Splain, *supra*), and the ruling is in accordance with the views I have just expressed. An act of Congress approved February 17, 1909 (35 Stat., 624, c. 134), authorized the Chief Justice of the Supreme Court of the District to designate a judge of the Municipal Court to sit in the police court during the "sickness, vacation, or disability" of one of the regular judges. A judge designated pursuant to this act tried a criminal case. The defendant having been convicted moved for a new trial. The judge took the motion under advisement, and sometime later, after the regular judge had returned and taken his seat on the bench, overruled the motion and sentenced the defendant. It was contended that he had no power to do so, and a writ of habeas corpus was sought to test the question. In rejecting the contention we said: "It was undoubtedly the intention of Congress in providing for a temporary judge, that he should perform the duties of the position during his incumbency and complete any work entered upon by him before he withdrew from the place; otherwise, as in the case of a trial, much of his effort might come to naught if the return to duty of the regular judge had the effect of terminating his authority, and thus the purpose of Congress in providing for a substitute judge would be defeated in many cases." To support our views of the law we cited State v. Stevenson, 64 W. Va., 392; State v. Bobbitt, 215 Mo., 10, 30; Bohannon v. Tabbin (Ky.) 76 S. W., 46, 49; Bedford v. Stone, 43 Tex. Civ. App., 200, 95 S. W., 1086; State ex rel. v. Williams, 136 Mo. App., 330, 336, 117 S. W., 618; Mayer v. Haggerty, 138 Ind., 628, and Fisher v. Puget Sound Brick, etc., Co., 34 Wash., 578.

In State v. Stevenson, a criminal case involving the death
100 sentence, the defendant pleaded guilty before a special judge who took time thereafter to consider of his judgment. While he was doing so the regular judge returned, assumed the bench, and sentenced the prisoner. The statute under which the special judge was appointed provided that he should serve in the absence of the regular judge. It was argued that the moment the regular judge appeared, the authority of the special judge ceased; therefore, that the sentence by the regular judge was valid. But the court, after reviewing the decision of its own state and others upon the question, ruled, "That the return of the regular judge would not oust the special judge of jurisdiction to try and finally dispose of any case begun before him." The court in Bohannon v. Tabbin expressed a like view. It said: "The fact that the regular judge returned before the case was finally disposed of by the special judge in no wise nullified the jurisdiction of the latter. It would create inextricable confusion if, after a special judge, elected because of the absence of the regular judge, had commenced the trial of a case, his jurisdiction to further try it should be ousted by the return of the regular judge. It needs no argument to demonstrate the hardship and expense to litigants which would arise upon the adoption of such a principle."

In addition to the authorities cited in the Shore case, the following are pertinent: Dupoyster v. Clarke, 121 Ky., 694; State v. Tomlinson, 74 N. W., 995; State v. Towndrow, 180 Pac., 282; State ex rel. v. Fidelity & Deposit Co., 117 S. W., 618, 620; Johnson v. State, 97 Pac., 1059, 1064. In State ex rel. v. Fidelity & Deposit Co., the court said that the substitute judge having tried the case, "his jurisdiction and authority over it continued until the motions consequent upon the trial were disposed of."

Cases where a judge's term of office had expired and his successor acted upon unfinished business, or where a special judge withdrew leaving work to be done, have no application. In such cases public policy required that the unfinished work be disposed of, but here no question of that kind existed, for Justice Stafford had completed the work for which he had been assigned before Mr. Justice Robb had decided to act.

The Shore case is directly in point. Why was it not followed? No explanation is offered. If we are not to respect our own decisions, their publication is an idle ceremony and must have a tendency to mislead the profession.

Under the Organic Act this court consists of only three judges. No litigant has a right to have his case adjudged by a greater number, but the appellants, by the projection of Mr. Justice Robb into the case, have secured the judgment of four judges. There is no authority in the statute for such a thing.

Considering the law, then, as it is, I am convinced that Mr. Justice Stafford's authority and jurisdiction continued until the motions for rehearing had been disposed of, that both cases were finally adjudicated on June 22, 1921, and that the court has no jurisdiction over them at this time.

In discussing the constitutionality of the act I shall repeat in substance what I said in the opinion of the court when these cases were adjudicated in June, 1921, making only such changes as shall be necessary to conform to the present situation. I shall also utilize the argument made by Mr. Justice Stafford in his concurring opinion.

The question presented by these cases is not one of economics. It does not call for a decision with respect to what constitutes thrift or lack of thrift. Nor is the wisdom or non-wisdom of the statute before the court. It is no part of our function to deal with such matters, and any discussion of them is quite beside the case. Our authority is limited to the single question, Had Congress the right to pass the act? When we decide that, we decide everything we have any right to touch. All else that is said, no matter how vehemently, is merely obiter.

The act provides not only for what is said in the statement of facts by the majority, but also for the protection of "women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living," and emphatically directs that it shall be interpreted to effectuate this purpose. It also provides that all parties interested are entitled to be heard before the board; that witnesses may be sum-

moned, and the aid of the courts invoked for the purpose of compelling their attendance; that after the prescribed investigation has taken place, it shall be the duty of the board to declare standards of minimum wages for the women in the occupations investigated and "what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals," and also to determine like standards for minors and what wages are unreasonably low for any such minor workers.

The board having in the manner provided by the act investigated the conditions of women and minor girls employed by hotels, lodging houses, apartment houses, clubs, restaurants, cafeterias, and hospitals, and the wages paid to them in these establishments, issued an order forbidding among other things, any person or corporation to employ a woman or minor girl in any of these places "at a rate of wages of less than 34½ cents per hour, $16.50 per week, or $71.50 per month," but providing that where bona fide meals are furnished as part payment of wages, not more than thirty cents per meal may be deducted from the weekly wages.

Appellant in No. 3438 does not deny the reasonableness of the wage established by the board. If its employes were not able because of age or of anything else to earn that wage, it could have procured permission under section 13 of the act to employ them for less; but it made no application for this permission. Its argument is, as we understand it, that since its employes are willing to work for a smaller wage—a wage less than is necessary to sustain them in good health according to the findings of the board—it has a right to contract with them on that basis; and because the act deprives it of that right it interferes with its liberty of contract an- thereby deprives it of its property without due process. In other words, it argues that Congress has no power to fix any wage, whether reasonable or unreasonable, for women and minors, even if it be absolutely necessary to do so in order that their health and morals may be pre-
101 served. Appellant in No. 3467 makes the same contention so far as it applies to her.

It is now firmly established, so often has it been decided, that the high respect due from one coordinate branch of the Government to another forbids the Judiciary to declare an act of Congress invalid unless it is manifestly so. "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government can not encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule." Sinking Fund Cases, 99 U. S., 700, 718. Mr. Justice Holmes, speaking for the court in Otis v. Parker, 187 U. S., 606, 608, 609, said: "While the courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view as well as for possible peculiar conditions which this court can know but imperfectly, if at all. Otherwise a constitution, instead

of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held semper ubique et ab omnibus." Supporting the same views are Rast v. Van Deman & Lewis Co., 240 U. S., 342, 366; United States v. Cohen Grocery Company, 255 U. S., 81; Patterson v. Kentucky, 97 U. S. 501, 503, and Louisiana v. Jumel, 107 U. S., 711, 767.

It is true, as Dean Pound says, that the theory in some courts that statutes will not be held unconstitutional unless their repugnance to the Constitution is beyond doubt has become " a mere courteous and smoothly transmitted platitude, and is worse than an anachronism." The Spirit of the Common Law, by Roscoe Pound, page 108. It is not so, however, in the Supreme Court of the United States, as the decisions just referred to demonstrate. Since, then, "every possible presumption" is in favor of the legality of a statute, he who attacks it has the very heavy burden, if he would succeed, of establishing its invalidity beyond a reasonable doubt. This must be kept in mind throughout our discussion.

As we have just seen the position of the appellants is that under no conceivable state of facts would Congress have the power to pass a minimum wage act. This must be their position, for if they admitted that under any state of facts Congress possessed that power, we would have to assume that those facts existed when the present act was passed. Such is the doctrine of Munn v. Illinois, 94 U. S., 113, 132, wherein it is said: "For our purposes we must assume that, if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us the question is one of power, not of expediency. If no state of circumstances could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the state. But if it could, we must presume it did." That principle has often been assailed, but the court has steadily refused to recede from it in any respect. Some of the cases which illustrate this are: Ga. Banking Co. v. Smith, 128 U. S., 174, 180; Budd v. New York, 143 U. S., 517, 543; German Alliance Ins. Co. v. Kansas, 233 U. S., 409; Brooks Scanlon Co. v. Railroad Commission, 251 U. S., 396. In the Kansas Case I find this: "Munn v. Illinois was approved in many state decisions, but it was brought to the review of this court in Budd v. New York, 143 U. S., 517, and this doctrine, after elaborate consideration, reaffirmed and against the same arguments which are now urged against the Kansas statute."

When Congress legislates for the District of Columbia it may exercise the police power in all its plenitude. Washington Terminal Co. v. District of Columbia, 36 App. D. C., 186, 191, District of Columbia v. Brooke, 214 U. S., 138, 149. About this there is no dispute. Under that power it has the right "to enact laws for the promotion of the health, safety, morals and welfare of those subject to its jurisdiction." Chicago, Burlington & Quincy Railroad Co. v. McGuire, 219 U. S., 549, 568. See also the case of Block v. Hirsh, 256 U. S., 135. Does this act fall within the power? The

Congress by enacting it says it does. "Upon what sound principles as to the relations existing between the different departments of government can the court review this action of the legislature?" Jacobson v. Massachusetts, 197 U. S., 11, 31. It can be done only where "a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law * * *." Mugler v. Kansas, 123 U. S., 623, 661. See also Minnesota v. Barber, 136, U. S., 313, 320, and Atkin v. Kansas, 191 U. S., 207, 223. This doctrine was reasserted in Leavy Leasing Co., Inc. v. Siegel, — U. S., — decided March 20, 1922, and in Stafford et al. v. Wallace, — U. S., — decided May 1, 1922. In the former it was held that the reports of committees appointed by New York officials to investigate the housing situation "and the very great respect which courts must give to the legislative declaration that an emergency existed would be amply sufficient to sustain an appropriate resort to the police power for the purpose of dealing with it in the public interest."

In the Stafford case, the court, speaking through the Chief Justice, declared that "it is primarily for Congress to consider and decide the fact of the danger and meet it," and added: "This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent."

I first inquire whether or not the act has any real or substantial relation to its declared object. For answer I may resort to our common knowledge. "A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the legislature and the courts * * *. The fact that the belief is not universal is not controlling, for there is
102 scarcely any belief that is accepted by every one." In Re Viemeister, 179 N. Y., 235, 240, approved in Jacobson v. Mass., supra 34. To the same effect is McNichols v. Pease, 207 U. S., 100, 111. "We think," says the Supreme Court, "that the trial court might well take judicial notice that the public health is deeply concerned in the reclamation of swamp and overflowed lands. If there is any fact which may be supposed to be known by everybody, and, therefore, by the courts, it is that swamps and stagnant waters are the cause of malarial and malignant fevers, and that the police power is never more legitimately exercised than in removing such nuisances." Leovy v. United States, 177 U. S., 621, 636. It is equally well known that if a working woman does not receive a sufficient wage to supply her with necessary food, shelter, and clothing, and she is compelled to subsist upon less than her requirements demand, the result must be that her health will be injuriously affected.

Congress did not pass the act until it had thoroughly investigated the subject involved. I glean the following from the House Committee's reports: The Department of Labor interviewed six hundred women workers and laid the results of its efforts before the commit-

tee. About half of the six hundred, it was shown, earned less than $8.00 per week, and over two-thirds less than $10.00 a week. This situation was not owing to their youth and inexperience, for seventy-two per cent were twenty-one years of age or older, and one-half of those earning less than $9.00 per week had been at work for five years and more. The least for which the average woman could obtain board and lodging in the District was $35.00 per month. Sufficient clothing, "even with the strictest economy," could not be obtained for less than $88.00 per year. Nearly forty-two per cent of the six hundred women interviewed spent less than that on clothing. To be well dressed, but not extravagantly, a woman must spend approximately $125.00 per year, and sixty-eight per cent of the women interviewed spent less than that amount. In the lowest paid groups of workers the average expenditure for clothing, says the report, "is below that which would permit of physical comfort and decency." Of the six hundred interviewed "45 per cent needed to receive outside assistance in order to make both ends meet." The Merchants and Manufacturers' Association of the District, representing thirty-three different businesses and employing about 5,000 persons, made known to the committee that it approved the bill. No one appeared to oppose it. The committee said that the remedy provided by the bill had been tried and found successful in various states of the union and in other parts of the English speaking world, and concluded, "that inadequacy of wages means either of two things, * * * inadequacy of all the essentials—shelter, clothing, food, etc., with resultant impoverishment of health, or * * * that from some source the wage must be supplemented with possible resort to wrongdoing."

As was said in Stafford v. Wallace, ante, "It was for Congress to decide from its general information and from such special evidence as was brought before it, the nature of the evils actually present or threatening and to take such steps by legislation within its power as it deemed proper to remedy them." According to the congressional decision, women and minor workers in the District were paid inadequate wages, and this had a tendency to affect injuriously their health and morals.

Thirteen states of the union, either by a statute or a constitutional provision, Argentina, France, Great Britain, Norway, Austria, and eight provinces of Canada, by legislative acts, have provided for a minimum wage for women on the theory that it tends to safeguard their health. Students of the subject and public boards in different parts of the world have found and declared as a result of thorough investigation that minimum wage stimulates industrial efficiency and aids industrial peace, and the experience of other countries may be considered by Congress in enacting such legislation as this. Muller v. Oregon, 208 U. S., 412, 419. This shows that in the judgment of a large part of the world there is an intimate relation between a minimum wage and the public welfare.

Minimum wage statutes have been assailed several times in the courts but no court has held one invalid. Stettler v. O'Hara, 69 Oreg., 519; Simpson v. O'Hara, 70 Oreg., 261; Williams v. Evans,

139 Minn., 32; State v. Crow, 130 Ark., 272; Larsen v. Rice, 100 Wash., 642; Spokane Hotel Co. v. Younger, 13 Wash. Dec., 322; Holcombe v. Creamer, 231 Mass., 99, and Poye v. State, -- Tex., —, decided October 15, 1920. This fact is worthy of serious consideration. Halter v. Nebraska, 205 U. S., 34, 40.

From the foregoing survey, I can not doubt that this act has a substantial relation to its expressed object. I now come to the other element of the problem: Is the act a palpable invasion of rights secured by the fundamental law?

In variant forms of argument it is urged that the act is invalid because it interferes with freedom of contract. That it does so must be conceded, but that is not fatal. Every statute exerting the police power interferes with freedom of contract. Under such a statute persons are forbidden to contract to do certain things which they were free to do before its enactment. If it be correct that the statute is void on that ground, there would be no room for the play of the police power. But, obviously, it can not be correct. "There is no absolute freedom to do as one wills or to contract a sone chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in *in* the interests of the community." The right to make contracts "is subject also, in the field of state action, to the essential authority of government to maintain peace and security, and to enact laws for the promotion of the health, safety, morals, and welfare of those subject to its jurisdiction." Chicago, Burlington & Quincy R. R. Co. v. McGuire, 219 U. S., 549, 567, 568.

103 In German Alliance Insurance Co. v. Kansas, 233 U. S., 389, 409, Mr. Justice McKenna, speaking of the dissenting opinion of Mr. Justice Brewer in Budd v. New York, 143 U. S., 517, wrote: "Every consideration was adduced, based on the private character of the business regulated, and, for that reason, its constitutional immunity from regulation, with all the power of argument and illustration of which that great judge was a master. The considerations urged did not prevail. Against them the court opposed the ever existing police power in government and its necessary exercise for the public good, and declared its entire accommodation to the limitations of the Constitution. The court was not deterred by the charge (repeated in the case at bar) that its decision had the sweeping and dangerous comprehension of subjecting to legislative regulation all of the businesses and affairs of life and the prices of all commodities." Therein the learned justice examines many of the prior decisions of the Supreme Court with respect to the police power and finds that according to them that power, when exercised for the public good, is in "entire accommodation to the limitations of the Constitution."

Many are the instances in which the court has sustained statutes involving a restriction upon freedom of contract: It has approved an act limiting the hours of employment in mines and smelters

Holden v. Hardy, 169 U. S., 366); forbidding the sale of cigarettes without license (Gundling v. Chicago, 177 U. S., 183); requiring the redemption in cash of store orders issued in payment of wages (Knoxville Iron Co. v. Harbison, 183 U. S., 13); prohibiting contracts for options to sell or buy grain (Booth v. Ill., 184 U. S., 425); permitting an individual to condemn property for the purpose of obtaining water for his land (Clark v. Nash, 198 U. S., 361), and forbidding the employment of women in laundries more than ten hours a day (Muller v. Oregon, 208 U. S., 412). In each of these cases the right of private contract was involved, but that did not deter the court from sustaining the statutes.

Between the sphere of constitutional guaranties and that of the police power there is a dividing line, but the courts have purposely refrained from pointing out just where it lies. Jacobson v. Mass., supra, 11, 25. "It is always easier to determine whether a particular case comes within the general scope of the power, than to give an abstract definition of the power itself which will be in all respects accurate. No one denies, however, that it extends to all matters affecting the public health or the public morals." Stone v. Miss., 101 U. S., 814, 818. Correctly understood, the constitutional guaranties against deprivation of liberty or property without due process of law protect only against arbitrary deprivation or arbitrary spoliation. In the leading case of Barbier v. Connolly, 113 U. S., 27, 31, the court considered the scope of the Fourteenth Amendment. It said: "But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources and add to its wealth and prosperity." In Miller v. Wilson, 236 U. S., 373, 380, Mr. Justice Hughes, speaking for the court, said: "As the liberty of contract guaranteed by the Constitution is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest—the question is whether the restrictions of the statute have reasonable relation to a proper purpose." Supporting the same doctrine are Holden v. Hardy, 169 U. S., 366; Muller v. Oregon, 208 U. S., 412; Riley v. Commonwealth of Mass., 232 U. S., 671, and Bosley v. McLaughlin, 236 U. S., 385.

Even property may be destroyed without compensation through the legitimate exercise of this power without offending against the constitutional guaranty. Mugler v. Kansas, 123 U. S., 623. "No legislature can bargain away the public health or public morals. The people themselves can not do it, much less their servants." Stone v. Miss., ante, 819. In the Mugler case the court, speaking of the Fourteenth Amendment, said: "* * * and it has never been regarded as incompatible with the principle, equally vital, because essential to the peace and safety of society, that all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community." Page 665. Other cases to the same effect are New Orleans Gas Co. v. Louisiana

Light Co., 115 U. S., 650, 672; Beer v. Mass., 97 U. S., 25, 32. "That the Fourteenth Amendment was not intended to and does not strip the states of the power to exert their lawful police authority is settled, and requires no reference to authorities." Thus spoke the learned chief justice in Louisville & Nashville Railroad v. Melton, 218 U. S., 36, 52.

While it is true that it was the Fourteenth Amendment and not the Fifth Amendment which was under consideration in many of the decisions which we have just referred to, what is said therein is as applicable to the one as to the other. Indeed, it is so stated in Barbier v. Connolly, supra, 31.

Repeatedly the Supreme Court has upheld statutes limiting the hours of labor or the footing that excessive hours interfere injuriously with the health of those who are compelled to practice them. Holden v. Hardy, supra, 366; Muller v. Oregon, 208 U. S., 412; Riley v. Commonwealth of Mass., supra, 671; Miller v. Wilson, supra, 373, and Bosley v. McLaughlin, 236 U. S., 385. The first case related to men engaged in mining. Does not a wage which will provide sufficient food have as close a relation to health as hours of labor do? I think so.

Congress found an evil existed. The workers, by reason of the law of competition, were unable to remove it. They were compelled to submit or go without work. "Necessitous men," says Lord Chancellor Nothington, "are not, truly speaking, free men." Vernon v. Bethell, 2 Eden, 110, 113. Congress alone could apply the remedy. There was a time when it was the principle of constitutional construction that the whole community had no right of control over the individual beyond the minimum necessary to keep the peace. Everything else was to be left to the free contract of a free man.

"Happily," says Dean Pound, "this idea passed its meridian
104 in our constitutional law at the end of the last century."
Spirit of the Common Law, ante, 49.

Suppose the women engaged in the different lines covered by the order in question were each paid only $6.00 per week while $16.50 per week was necessary to feed, clothe and shelter each, and their employers could afford to pay $16.50 a week but would not pay it because under the law of supply and demand women had to work for that wage or starve, should not the government have the power, in the interests of the community, if not of humanity, to interpose and compel the payment of a living wage? The choicest function of government is to protect the weak against the unrighteous acts of those who are strong economically or physically. Would it be just to permit an employer to exact from a woman $16.50 worth of work for $6.00 simply because he had the power to do so? I think not.

Congress in pursuance of the Constitution (Art. I, Sec. 8) has authority to pass a protective tariff law for the purpose of guarding industries against foreign competition, to the end that their owners may be able to exact higher prices for the output of their industries than they could secure if foreign competition was permitted. This authority is not conferred specifically, but under the power to collect taxes, duties, imposts, and excises, and to regulate commerce with

foreign nations it is inferred. Arnold v. United States, 147 U. S., 494; United States v. American Express Co., 177 Fed., 735. Unless it be dangerous to intrust Congress with the power to increase the price which manufacturers may charge for their commodities by restricting competition, it should not be dangerous to clothe it with power to reasonably increase the wages of working women and girls by the same process.

The majority condemns the act as economically and socially unwise, and warns wage earners against its viciousness. In the record there is absolutely no fact to justify this. Moreover, it is in the teeth, as I have shown, of the judgment, of thirteen states, of five foreign nations, of eight Canadian provinces, of the Merchants' and Manufacturers' Association of this city, of practically every member of the Congress which passed the act—in a word, of every one who has studied the matter, if we are to be governed by the record, and we should be. But, suppose the act is unwise, what has that to do with its constitutionality? What Congress does may be wise and yet unconstitutional (Child Labor Case—Bailey et al. v. The Drexel Furniture Co., 1—U. S.—decided May 15, 1922). Courts are not vested with the power to measure the validity of a legislative act by the wisdom or lack of wisdom it may disclose, and if they assume to do so, they are guilty of a usurpation forbidden by the Constitution. Otis v. Parker, ante.

It is argued that in order that a fair minimum wage may be fixed, it is necessary to ascertain the cost of rent, clothes, food, and recreation. Not at all. As well say that a railroad rate can not be determined by the Interstate Commerce Commission until the price of iron, steel, land, coal, clothing, etc., used by the railway has been found. No such course has every been followed in fixing a railroad rate, nor is it necessary that it should be. The body charged with fixing the rate may assume that the prevailing prices with respect to the other things are reasonable, in the absence of any showing to the contrary. But, again, this matter is not pertinent, since it goes to the method of doing the thing, not the power to do it.

Fault is found with the act because, as charged, it is a price or wage fixing measure. But where, I ask, is there anything in the constitution which specifically prohibits Congress from fixing prices or wages? We must not allow ourselves to be misled by mere words, for they are "but skins of thought." What the law concerns itself about is the thought—the substance. Congress has the authority under the police power, when legislating for the District, and it is its duty, to promote the general welfare of the community; and if in pursuing this authority it becomes necessary to fix a minimum wage or the price of a commodity, it may do so. The validity of the action depends upon the conditions existing. As was said by Mr. Justice Holmes, speaking for the court, in Schenck v. United States, 249 U. S., 47, 52, it may be no harm to raise a false alarm of fire on the prairies, but a very grave offense to do so in a crowded theater. So with the exercise of the police power. Whether it may or may not be exerted is to be answered by the facts of the situation, no matter by what name they are known. The price fixing features of the

Ball Rent Act (Block v. Hirsh, supra) and of the New York Rent Act (Levy, etc. v. Siegel, supra) were sustained because the general welfare at the time demanded their enactment, just as the protection of the morals and health of women called for the passage of the act we are reviewing. An endeavor is made to differentiate those acts from the present one by saying they were brought into existence by an emergency. But this is only another way of saying that the facts—the emergency—justified the exertion of the power which resulted in their enactment. When those facts disappear, the right to exert the power may also disappear, but the power will remain. There is a wide distinction between the existence of the power and the constitutional right to use it. This distinction is completely lost sight of by those who oppose the act.

In a broad sense the act is not a wage fixing measure, but a measure to prevent the confiscation of a working woman's labor by those who have the economic power to do it.

It would extend this opinion far beyond a reasonable length if I were to review the decisions of the Supreme Court cited in the majority opinion, yet I can not refrain from saying that a careful examination of each will disclose that they support the views I have here expressed. Take, for example, Muller v. Oregon. It affirmed the constitutionality of an act fixing the hours of labor for women in laundries and so forth. The majority quote an excerpt from the opinion to the effect that the general right to contract in relation to one's business is part of the liberty of the individual protected by the Fourteenth Amendment, but fail to give the concluding part of the sentence, which reads,—"yet it is equally well settled that this liberty is not absolute and extending to all contracts, and that a state may, without conflicting with the provisions of the Fourteenth Amendment, restrict in many respects the individual's power of contract" (p. 421). This is precisely what I contend for, and shows conclusively the decision is not an authority against the validity of the act.

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While the record does not tell that the appellant Lyons lost her position by reason of the enforcement of the act, if she did, as stated by the majority, someone else secured it at a better wage. This was not a calamity which should condemn the statute.

Much was said during the argument at the bar to the effect that if this statute is sustained, it will lead to sovietism, and so forth. When statutes having that effect come up for judgment we shall deal with them. It is no part of our duty to engage in speculation concerning them now. "Our present duty," says Mr. Justice McKenna, "is to pass upon the statute before us, and if it has been enacted upon a belief of evils that is not arbitrary we can not measure their extent against the estimate of the legislature. McLean v. Arkansas, 211 U. S., 539." Tanner v. Little, 240 U. S., 369, 385. See also Central Lumber Co. v. South Dakota, 226 U. S., 157, 160, and Purity Extract Co. v. Lynch, 226 U. S., 192, 204, 205.

Concerning sovietism, however, I may say that I do not think the upholding of the act would have the tendency claimed. On the

contrary I am convinced the opposite effect would be produced, because the decision would demonstrate that this government, as framed by the fathers, has ample power, and those invested with that power have the disposition, to protect the weak against the strong by administering justice to both. If the power did not exist and the government could not interfere but would have to stand supinely by while wrong dominated right, there might be some basis for the contention that a change is necessary in our institutions; but with the recognition of the power, virile and efficient, the contention loses all force it might otherwise have.

It appears to me conclusively that a minimum wage has a real and substantial relation to the health and morals of women and minor girls who work, and that Congress by providing for the establishment of such a wage in the manner outlined in the statute has not acted arbitrarily or spoliatively, but clearly within the limits of the police power with which it is intrusted.

Mr. Justice Stafford, after declaring he concurred in the opinion of the court as written by me in June, 1921, said in effect that the minimum wage law for women, the constitutionality of which is challenged in these cases, is an act passed in the public interest, and by way of protection to a class which might reasonably be considered as needing protection, viz., the women who must labor in order to live. It would seem that the right of this class to live on a barely decent level, and the right of the public to have them so live, should outweigh the right of those who do not need to work in order to live, and who therefore are merely asserting a right to earn money and thereby accumulate property. If a woman is willing to work for less than a decent living wage it must be because she has other means of livelihood, or because she is willing to live below that level. She ought not to be allowed to live below that level, if that means that the woman beside her, who is trying to live decently, will be dragged down with her. If she has other means of livelihood, then she ought not so to compete with those who have none that they will be reduced to squalor or required to resort to immoral means of living. The public interest in the purposes of the act is too obvious to call for explanation or comment. Congress has made this law with the declared purpose of protecting and promoting the public health, morals and welfare, by making it illegal to employ women at a wage which will not afford them a decent living. The machinery provided is for the purpose of ascertaining the lowest decent living wage. We must assume that such ascertainment is possible, and that in a given case it has been reached, unless it is alleged and shown that the action taken is arbitrary, confiscatory, or otherwise high-handed; and no such allegation is here made, although the case presented appears to be one of those cases of individual hardship which are possible under any law.

For the reasons given, I dissent.

106 Monday, November 6th, A. D. 1922.

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October Term, 1922.

No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

Per MR. JUSTICE VAN ORSDEL,
November 6, 1922.

Mr. Chief Justice Smyth dissents.

107 Monday, November 6th, A. D. 1922.

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October Term, 1922.

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby reversed with costs,

and that this cause be and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

Per Mr. Justice VAN ORSDEL,
November 6, 1922.

Mr. Chief Justice Smyth dissents.

108 Monday, November 6th, A. D. 1922.

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No. 3438.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, &c., Appellant,

vs.

JESSE C. ADKINS et al.

and

No. 3467.

WILLIE A. LYONS, Appellant,

vs.

JESSE C. ADKINS et al.

The dissenting opinions filed in the above entitled causes by Mr. Justice Van Orsdel on June 6, 1921, were this day withdrawn by him.

109 Thursday, January 11th, A. D. 1923.

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No. 3939.

JESSE C. ADKINS et al., Appellants,

vs.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation,

and

No. 3940.

JESSE C. ADKINS et al., Appellants,

vs.

WILLIE A. LYONS.

On consideration of the motion to dispense with printing the records in the above entitled causes and for leave to submit on the

briefs filed in Nos. 3438 and 3467, It is ordered by the Court that said motion be and the same is hereby granted.

110 Thursday, January 11th, A. D. 1923.

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No. 3939.

January Term, 1923.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellants,

vs.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and on the appellant's motion to either affirm or reverse the decree below which was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs under authority of Nos. 3438 and 3467.

Per MR. JUSTICE VAN ORSDEL,
January 11, 1923.

Mr. Chief Justice Smyth dissenting for the reasons set forth in his dissenting opinion in Nos. 3438 and 3467.

111 Thursday, January 11th, A. D. 1923.

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January Term, 1923.

No. 3940.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appelants,

vs.

WILLIE A. LYONS.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and on the ap-

pellants' motion to either affirm or reverse the decree below which was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs under authority of Nos. 3438 and 3467.

Per MR. JUSTICE VAN ORSDEL,
January 11, 1923.

Mr. Chief Justice Smyth dissenting for the reasons set forth in his dissenting opinion in Nos. 3438 and 3467.

112 Friday, January 12th, A. D. 1923.

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No. 3939.

JESSIE C. ADKINS et al., &c., Appellants,

vs.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation.

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause and to stay the Mandate until further order, submitted by Mr. F. H. Stephens, of counsel for appellants, it is ordered by the Court that said motion be and the same is hereby granted.

113 Friday, January 12th, A. D. 1923.

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No. 3940.

JESSE C. ADKINS et al., &c., Appellants,

vs.

WILLIE A. LYONS.

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause and to stay the Mandate until further order, submitted by Mr. F. H. Stephens, of counsel for appellants, it is ordered by the Court that said motion be and the same is hereby granted.

114 UNITED STATES OF AMERICA, *ss:*

To the Children's Hospital of the District of Columbia, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days

from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Jesse C. Adkins, Ethel M. Smith, John J. Newbold, Constituting the Minimum Wage Board of the District of Columbia are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this Twelfth day of January, in the year of our Lord one thousand nine hundred and twenty-three.

CONSTANTINE J. SMYTH,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged.
CHALLEN B. ELLIS,
Counsel for Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jan. 12, 1923. Henry W. Hodges, clerk.

115 UNITED STATES OF AMERICA, *ss:*

To Willie A. Lyons, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Jesse C. Adkins, Ethel M. Smith, John J. Newbold, Constituting the Minimum Wage Board of the District of Columbia are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this Twelfth day of January, in the year of our Lord one thousand nine hundred and twenty-three.

CONSTANTINE J. SMYTH,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged.
CHALLEN B. ELLIS,
Counsel for Appellee.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jan. 12, 1923. Henry W. Hodges, clerk.

116 In the Court of Appeals of the District of Columbia.

No. 3939.

JESSE C. ADKINS et al., Appellants,

vs.

CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, Appellees.

No. 3940.

JESSE C. ADKINS et al., Appellants,

vs.

WILLIE A. LYONS, Appellee.

Assignment of Errors.

Now come the appellants in the above entitled cause and assign for errors,

1. The action of the court in granting a rehearing by a changed court after a motion for rehearing had been denied by the court which heard the case.

2. The action of the court in affirming the decree of the Supreme Court of the District of Columbia.

3. The judgment and opinion of the Court of Appeals holding the Minimum Wage Law, the Act of September 19, 1918, to be unconstitutional.

F. H. STEPHENS,
Corporation Counsel, D. C., Attorney for Appellants.

[Endorsed:] Nos. 3939 and 3940. Jesse C. Adkins et al., Appellants, vs. Children's Hospital of the District of Columbia, Appellees. Jesse C. Adkins et al., Appellants, vs. Willie A. Lyons, Appellee. Assignment of Errors. Court of Appeals, District of Columbia. Filed January 13, 1923. Henry W. Hodges, clerk.

117 In the Court of Appeals of the District of Columbia.

No. 3939.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellants,

vs.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation,

and

No. 3940.

JESSE C. ADKINS, ETHEL M. SMITH, JOHN J. NEWBOLD, Constituting the Minimum Wage Board of the District of Columbia, Appellants,

vs.

WILLIE A. LYONS.

The Clerk in the preparation of a transcript of record in this Court on appeal to the Supreme Court of the United States in these cases will include the following, to wit:

1. Transcripts of record, Nos. 3939 and 3940 and the following papers and proceedings in Nos. 3438 and 3467:

2. The order assigning Mr. Justice Stafford of the Supreme Court of the District of Columbia to sit in the absence of Mr. Justice Robb.

3. Argument of causes.

4. Opinions.

5. Concurring opinions.

6. Decrees.

7. June 14. Petitions for rehearing, and

8. Stay of Mandates.

9. Memorandum: Copies of petitions for rehearing mailed by Clerk to Chief Justice, Justice Robb, Justice Van Orsdel and Justice Stafford.

10. June 22. Orders denying a rehearing.

11. Memorandum: The foregoing orders denying a rehearing were made upon letters to the Clerk from Chief Justice Smyth and Justice Stafford directing their entry.

12. Memorandum: July 6. Justice Van Orsdel, by letter to Clerk, voted to sustain motions for rehearing.

13. Memorandum: July 9. Justice Robb, by letter to Clerk, voted to sustain motions for rehearing.

14. July 11. Motions to set aside orders denying a rehearing.

15. July 13. Orders of the Court granting a rehearing. Mr. Chief Justice Smyth dissenting.

16. Memorandum: The foregoing orders granting a rehearing were entered upon the above letters from Justice Robb, dated July 9, and from Justice Van Orsdel, dated July 6, directing their entry.

118 17. The motions to set aside the orders granting the rehearing.

18. Motions to set aside orders granting rehearing denied.

19. Reargument of causes.

20. The opinion, dissenting opinion, and decrees.

21. Withdrawal of dissenting opinions of June 6, 1921, by Justice Van Orsdel.

and the following in Nos. 3939 and 3940:

22. Orders dispensing with printing, &c.

23. Decrees.

24. Orders allowing appeals and staying Mandates.

25. Citations with acknowledgment of service.

26. Assignment of Errors.

27. This Designation.

F. H. STEPHENS,
Attorney for Appellants.

Endorsed: Nos. 3939 & 3940. Jesse C. Adkins et al. vs. The Children's Hospital of the District of Columbia, and Jesse C. Adkins et al. vs. Willie A. Lyons. Designation of transcript. Court of Appeals, District of Columbia. Filed Jan. 13, 1923. Henry W. Hodges, Clerk.

119 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 118, inclusive, constitute true copies of the transcripts of records and proceedings of said Court of Appeals, as designated by counsel, in the cases of Jesse C. Adkins, Ethel M. Smith, John J. Newbold, Constituting the Minimum Wage Board of the District of Columbia, Appellants, vs. The Children's Hospital of the District of Columbia, a Corporation, and Jesse C.

Adkins, Ethel M. Smith, John J. Newbold, Constituting the Minimum Wage Board of the District of Columbia, Appellants, vs. Willie A. Lyons, Nos. 3939 and 3940, January Term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this Thirteenth day of January, A. D. 1923.

[Seal of Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

Endorsed on cover: File Nos. 29,345, 29,346. District of Columbia Court of Appeals. Term No. 795. Jesse C. Adkins, Ethel M. Smith, John J. Newbold, constituting the Minimum Wage Board of the District of Columbia, appellants, vs. The Children's Hospital of the District of Columbia. Term No. 796. Jesse C. Adkins, Ethel M. Smith, John J. Newbold, constituting the Minimum Wage Board of the District of Columbia, appellants, vs. Willie A. Lyons. Filed January 15th, 1923. File Nos. 29,345, 29,346.